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IN THE MATTER OF THE CLAIM OF:

DR. RICHARD G. HARVEY, HARVEY FAMILY CHIROPRACTIC,  
PHYSICAL THERAPY & ACUPUNCTURE, PLLC

- and -

ALLSTATE INSURANCE COMPANY  
CLAIMANT

CLAIM #

Hazel Warsop	0252198022
Maximiliano Navas	0245368345
Antonia Colorado	0250922911
Jennifer Martin	0255291577
Donte Sanchez	0245791082
Lindsay G. Campbell	0251515986
Lacoya D. James	0246851430
Marilyn Navas	0245368345
Quentin Brown	0250634607
Mark Roberts	0244951786
Lauren Harrison	0243105186
Derrick Norman	0245313549
Franklin Sanchez	0245313549
Sandra Michaels	0245313549
Octavia Michaels	0245313549

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(Caption continued on next page.)

March 21, 2013  
1:35 p.m.

CONTINUED EXAMINATION of DR. RICHARD G.  
HARVEY, taken by Allstate Insurance Company,  
pursuant to Notice and Policy Provisions, held at  
115 Broadway, New York, New York before Josephine  
Coric, a Notary Public for and within the State of  
New York. LH REPORTING SERVICES, INC.  
Computer-Aided Transcription  
(516) 484-2325

(1)		
(2)	Kathleen Franklin	0254090780
	Julia Winters	0231667031
(3)	Emilia Ortiz	0240086579
	Jack Dickerson Jr.	0256763293
(4)	Richard Fincher Jr.	0257964742
	Aneika Roache	0259034189
(5)	Nicole R. Ueberall	0258394963
	Prince Thompson	0256763293
(6)	Veronica M. Thompson	0256763293
	James Kelly	0250922911
(7)	Melvin A. Dias	0220567150
	Miriam Levinson	0269621420
(8)	Warren Sio	0268001419
	Sabrina Musharbash	0270559099
(9)	Phyllis Rhodes	0231660951

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(2) A P P E A R A N C E S:

(3)

(4)

(5) MARCOTE & ASSOCIATES, P.C.  
(6) Attorneys for Dr. Richard G. Harvey/Harvey  
(7) Family Chiropractic, Physical Therapy &  
(8) Acupuncture, PLLC

(7) 403 Merrick Avenue, 2nd Floor  
East Meadow, New York 11554

(8)

(9) BY: LOUIS F. CHISARI, ESQ.

(10)

(11)

(12) STERN & MONTANA, LLP  
Attorneys for Allstate Insurance Company  
115 Broadway, 20th Floor  
(13) New York, New York 10006

(14)

(15) BY: DANIEL MARVIN, ESQ.  
FILE NO. 1280.266

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(1)

(2) D R. R I C H A R D G. H A R V E Y, after  
(3) having first been duly sworn by a Notary  
(4) Public of the State of New York, testified  
(5) as follows:

(6) EXAMINATION BY

(7) MR. MARVIN:

(8) Q Good afternoon, Dr. Harvey.

(9) A Good afternoon.

(10) Q As you know, my name is Daniel  
(11) Marvin, and I'm an attorney here at the law firm  
(12) of Stern & Montana. We represent Allstate  
(13) Insurance Company in connection with this  
(14) continued Examination Under Oath with respect to  
(15) the additional verification of the claims which  
(16) were identified in the notices of Examination  
(17) Under Oath which were sent to you which were  
(18) marked as Exhibit C to this EUO.

(19) Before we begin, I just want to  
(20) remind you of the ground rules for the  
(21) Examination Under Oath; we discussed them the  
(22) last time, I just want to refresh your  
(23) recollection as to them. First, I'm going to  
(24) ask you questions and when you answer, I'll  
(25) assume that you've understood my question. If

(1) DR. RICHARD G. HARVEY  
(2) at any time do you not understand my question,  
(3) please ask me to repeat or rephrase and I will  
(4) do so.

(5) Second, as you now, there's a  
(6) court reporter seated here who is going to be  
(7) taking down everything we say, so in order to  
(8) allow her to take an accurate record, I'll ask  
(9) that you provide audible responses with no nods  
(10) or gestures. Because the reporter is unable to  
(11) take down the testimony of more than one person  
(12) speaking at a time, I'll ask you to allow me to  
(13) finish asking my question before you answer and  
(14) I'll allow you the same courtesy.

(15) Third, if you need to take a break  
(16) at any time, let me know, but if there's a  
(17) question pending, I ask that you finish  
(18) answering the question before we take your  
(19) break.

(20) Now, you've been given an oath  
(21) today to tell the truth, the whole truth and  
(22) nothing but the truth. Do you understand the  
(23) oath and obligation that you have made?

(24) A Yes.

(25) Q And do you understand all of the

(1) DR. RICHARD G. HARVEY  
(2) instructions that I've given you so far?

(3) A Yes.

(4) Q Do you have any questions so far?

(5) A No.

(6) Q Are you having any medical  
(7) problems or are you under the influence of any  
(8) alcohol or medication which would impact your  
(9) ability to give testimony in connection with  
(10) today's Examination Under Oath?

(11) A No.

(12) Q With respect to objections, I also  
(13) want to remind you that this is not an  
(14) evidentiary or judicial proceeding, and as such,  
(15) it is not governed by the rules of civil  
(16) procedure. Any objections made by your counsel  
(17) have no bearing on the proceeding and in the  
(18) event that your counsel does object, his  
(19) objection will be noted for the record and you  
(20) should answer the question.

(21) If your lawyer instructs you not  
(22) to answer certain questions and you choose not  
(23) to answer based upon the advice of your counsel,  
(24) please be advised that your failure to answer  
(25) questions asked during this Examination Under

(1) DR. RICHARD G. HARVEY

(2) Oath could be construed as a failure to  
(3) cooperate and may result in the denial of the  
(4) claims.

(5) Do you understand all the  
(6) instructions?

(7) A Yes.

(8) Q In preparation for your testimony  
(9) today, did you do anything?

(10) A No.

(11) Q Did you meet with anyone other  
(12) than your counsel in preparation for today's  
(13) continued Examination Under Oath?

(14) A No.

(15) Q With respect to the testimony you  
(16) gave during the first day of your EUO, which is  
(17) short for Examination Under Oath, did you speak  
(18) with anyone other than your counsel regarding  
(19) that testimony?

(20) A No.

(21) Q Did you review any documents in  
(22) preparation for your testimony today?

(23) A There were documents that were  
(24) requested on a letter I received from your  
(25) office, and I brought those documents with me.

(1) DR. RICHARD G. HARVEY

(2) MR. CHISARI: Let the record  
(3) reflect that approximately 7,000 pages of  
(4) documents were turned over to the  
(5) insurance carrier in connection with this  
(6) EUO.

(7) Q Dr. Harvey, last week there were a  
(8) good amount of documents turned over to us by  
(9) your counsel. I see you have brought with you  
(10) today a shorter stack of documents than what was  
(11) turned over by your counsel.

(12) Did you review all of the  
(13) documents which were provided through your  
(14) counsel to us or just the documents you brought  
(15) with you today?

(16) A Everything's been prepared by me  
(17) to bring to you guys.

(18) Q What documents did you bring with  
(19) you today?

(20) A The documents you requested on  
(21) Ms. Phyllis Rhodes, Ms. Lynn Ho (phonetic), on  
(22) Ms. Musharbash, on Owen Ho (phonetic), Warren  
(23) Sio, Donte Johnson.

(24) Q I don't believe those names --

(25) MR. CHISARI: Those names were

(1) DR. RICHARD G. HARVEY

(2) given in a letter sent to me also.

(3) MR. MARVIN: Okay, they were in a

(4) subsequent --

(5) MR. CHISARI: No, it wasn't.

(6) Actually, it was all part of the

(7) continued notice your office sent.

(8) MR. MARVIN: Okay.

(9) Q Do you recall at the first day of  
(10) testimony we started talking about a patient of  
(11) yours, Derrick Norman?

(12) A Yes.

(13) Q Today I would like to continue  
(14) talking about Mr. Norman's treatment. I'm going  
(15) to mark as Exhibits I and J two sets of  
(16) documents which were provided by your counsel  
(17) last week. Exhibit I will be the physical  
(18) therapy notes which were provided related to  
(19) Mr. Norman, and Exhibit J will be the  
(20) acupuncture notes related to Mr. Norman.

(21) (Whereupon, photocopies of the  
(22) above-referenced documents were marked  
(23) Harvey Exhibits I and J respectively for  
(24) identification, this date.)

(25) Q Dr. Harvey, take a look at the two

(1) DR. RICHARD G. HARVEY

(2) documents and let me know if they accurately  
(3) reflect the documents which were submitted  
(4) through your counsel to us last week?

(5) A (Perusing). Yes, I believe so.

(6) Q The record should reflect for the  
(7) purposes of ease of identification, we did stamp  
(8) some of the documents with Bates number in the  
(9) lower right-hand corner. Dr. Harvey, as to  
(10) certain documents, I'll be referring to the  
(11) Bates numbers which you can see in the lower  
(12) right-hand corner.

(13) Other than the Bates stamps on  
(14) those documents, do these documents accurately  
(15) reflect what was provided to us through your  
(16) counsel last week?

(17) A Yes.

(18) Q Where were these documents kept?

(19) A In my office.

(20) Q Were these documents kept in the  
(21) usual course of business of Harvey Family  
(22) Chiropractic, Physical Therapy & Acupuncture,  
(23) which I will refer to as Harvey Family for  
(24) short?

(25) A Yes.

(1) DR. RICHARD G. HARVEY

(2) Q And are these copies of the  
(3) originals which are kept in Harvey Family's  
(4) records in your office?

(5) A Yes.

(6) Q Are you familiar with these  
(7) records?

(8) A Yes.

(9) Q To your knowledge, were these  
(10) records prepared contemporaneously with the  
(11) services provided to the claimants which are the  
(12) subject of this EUO?

(13) A Yes.

(14) Q And just to clarify, these  
(15) particular records relate to Mr. Derrick Norman,  
(16) but with respect to all of the claimants, which  
(17) are the subject of this EUO, would your answers  
(18) be the same with respect to whether or not the  
(19) documents were kept in the ordinary course of  
(20) Harvey Family's business?

(21) A Yes.

(22) Q And would your answers be the same  
(23) with respect to if the documents, to the best of  
(24) your knowledge, accurately reflect the services  
(25) provided to the claimants?

(1) DR. RICHARD G. HARVEY

(2) A Yes.

(3) Q Dr. Harvey, when did Mr. Norman  
(4) first present to Harvey Family for physical  
(5) therapy services?

(6) A I don't know the exact date.

(7) Q Do any of the documents contained  
(8) in Exhibit I refresh your recollection as to the  
(9) date?

(10) A (Perusing). This looks like an  
(11) initial evaluation. It looks like the first day  
(12) was 5/30 of 2012.

(13) Q You're referring to the initial  
(14) evaluation form which is stamped Harvey 002581?

(15) A Yes.

(16) Q With respect to that form, who  
(17) created the template for this form?

(18) A I don't recall.

(19) Q Did you create the template for  
(20) this form?

(21) A I don't recall.

(22) Q Do you recall if you had any input  
(23) in the creation of the template for this form?

(24) A I'm sure I had some input with it.

(25) Q When you say that, what do you

(1) DR. RICHARD G. HARVEY

(2) base that on? Do you have any specific  
(3) recollection of having any input in the creation  
(4) of this form?

(5) A I don't have any specific  
(6) recollection, no.

(7) Q With regard to Mr. Norman, what  
(8) were his complaints which lead him to receive  
(9) physical therapy at Harvey Family?

(10) A Looking at the form, he appears to  
(11) be complaining of shoulder pain, knee pain, hand  
(12) and wrist pain.

(13) Q Do you recognize the handwriting  
(14) on this form?

(15) A No.

(16) Q Do you know who performed the  
(17) initial evaluation for physical therapy services  
(18) on Mr. Norman?

(19) A One of my therapists.

(20) Q Who are your therapists?

(21) A Bervin Brual and Marlon Millares.

(22) Q Was Marlon Millares a physical  
(23) therapist or a physical therapist's assistant?

(24) A Physical therapy assistant.

(25) Q Did you speak to Mr. Brual or

(1) DR. RICHARD G. HARVEY

(2) Mr. Millares in preparation for your testimony  
(3) here today regarding the physical therapy  
(4) services provided to Mr. Norman?

(5) A All I told them was I needed a  
(6) copy of the records for the EUO.

(7) Q When you say "him," who are you  
(8) referring to?

(9) A I told the therapists, I told both  
(10) of them I needed the records, a list of patients  
(11) that were pertaining to the EUO.

(12) Q Which therapist actually gave you  
(13) the records, if you know?

(14) A I don't know.

(15) Q Were the records given directly to  
(16) you or one of your assistants?

(17) A They were given to one of my girls  
(18) to copy.

(19) Q With respect to the objective  
(20) findings as indicated on the initial evaluation  
(21) report, what were they?

(22) A There was a reduction of shoulder  
(23) range of motion, there was a reduction of wrist  
(24) range of motion, there was a reduction of the  
(25) knee range of motion.

(1) DR. RICHARD G. HARVEY

(2) Q Which part of the initial  
(3) evaluation physical therapy form are you  
(4) reviewing in determining what the findings were?

(5) A I'm looking where it says range of  
(6) motion.

(7) Q Is there anything else aside from  
(8) the shoulder and wrist reduction in range of  
(9) motion?

(10) A The knee.

(11) Q With regard to the special tests  
(12) performed on Mr. Norman at his initial  
(13) evaluation as indicated on Harvey 002582, do you  
(14) see that section dealing with special tests?

(15) A Yes.

(16) Q What's the McMurray's test?

(17) A It's a test to test for knee pain.

(18) Q What's the Clark's test?

(19) A That, I'm not familiar with.

(20) Q What's the Yerbinson's (phonetic)  
(21) test?

(22) A That, I'm not familiar with.

(23) Q What's the Speed's test?

(24) A I'm not familiar with that test.

(25) Q And the supraspinatus test?

(1) DR. RICHARD G. HARVEY

(2) A I believe that's a test to test  
(3) one of the muscles in the shoulder.

(4) Q What's the Phalen's test?

(5) A That's a test for the wrist.

(6) Q With respect to the Clark's test  
(7) and the Yerbinson's test and the Speed's test,  
(8) do you know why those tests were performed on  
(9) Mr. Norman?

(10) A No, I don't.

(11) Q Can you describe what the  
(12) treatment plan was for Mr. Norman with respect  
(13) to physical therapy?

(14) A They recommended cold packs, they  
(15) recommended muscle stimulation, they recommended  
(16) therapeutic massage, they recommended  
(17) therapeutic exercises.

(18) Q Anything else?

(19) A Recommended range of motion,  
(20) stretching, and educating the patient.

(21) Q Which parts of the body were those  
(22) treatments recommended for?

(23) A I believe it was the knee, the  
(24) shoulder and the wrist.

(25) Q And what is that belief based on?

(1) DR. RICHARD G. HARVEY

(2) A Based on the patient findings.

(3) Q Based on the initial evaluation  
(4) report for physical therapy?

(5) A Correct.

(6) Q So am I correct that you actually  
(7) don't have any firsthand knowledge of the  
(8) physical therapy examination of Mr. Norman?

(9) A Correct.

(10) Q And you don't have any firsthand  
(11) knowledge of the treatment plan which was  
(12) prescribed for him or given to him by the  
(13) physical therapists at Harvey Family?

(14) A Correct.

(15) Q Just to go back to the first page  
(16) of the initial physical therapy evaluation  
(17) report, Harvey, 002851, do you see the  
(18) indication for posture about a third of the way  
(19) down the page?

(20) A Yes.

(21) Q Next to it, there's a circle with  
(22) a slash through it?

(23) A Yes.

(24) Q What does that mean?

(25) A Looks like his posture was normal.

(1) DR. RICHARD G. HARVEY

(2) Q And under gait right underneath  
(3) that, what does that mean?

(4) A He had a mild antalgic gait.

(5) Q What does that mean?

(6) A He was listing to the side  
(7) slightly.

(8) Q And what is ADL performance?

(9) A His activities of daily living.

(10) Q And that indicates moderate  
(11) difficulty lifting?

(12) A Yes.

(13) Q And something else which I can't  
(14) read. Do you know what that something else is?

(15) A No, I don't.

(16) Q And, again, your knowledge of this  
(17) diagnosis is based solely of your review of this  
(18) document in front of you, correct?

(19) A Correct.

(20) Q If you turn to the first page of  
(21) Exhibit I, which is the physical therapy  
(22) referral from David Randall Dynof, M.D., what is  
(23) this document?

(24) A This is a document recommending  
(25) therapy, physical therapy.

(1) DR. RICHARD G. HARVEY

(2) Q Is this a prescription?

(3) A Yes.

(4) Q Do you know if Harvey Family is  
(5) required to have a prescription such as this  
(6) prior to providing physical therapy services to  
(7) a claimant?

(8) A I believe they need a referral to  
(9) do therapy.

(10) Q You're saying referring, I'm  
(11) saying prescription, are we talking about the  
(12) same thing?

(13) A Yes.

(14) Q Dr. Harvey, you'll see this  
(15) referral as a diagnosis of bilateral hand pain,  
(16) right shoulder pain and bilateral knee pain, do  
(17) you see that?

(18) A Yes.

(19) Q Do you see on this form there are  
(20) many different types of exercises which could be  
(21) referred, including functional therapy,  
(22) therapeutic exercises, ambulation, neuromuscular  
(23) reeducation, modalities, indication for  
(24) intensity as well as strength exercises?

(25) A Yes.

(1) DR. RICHARD G. HARVEY

(2) Q Do you see that there is a line  
(3) for the referring provider to check off which of  
(4) those procedures he is referring for?

(5) A Yes.

(6) Q And do you also see that none of  
(7) those particular lines are checked off?

(8) A Yes.

(9) Q When Harvey Family receives a  
(10) physical therapy referral or prescription  
(11) without any checkmarks on the recommended  
(12) therapies, how is it determined which therapies  
(13) to provide?

(14) A The therapist will evaluate the  
(15) patient and will decide what they most need.

(16) Q Is it common for Harvey Family to  
(17) receive referrals or prescriptions without any  
(18) sort of treatment plan from the referring  
(19) provider?

(20) A Yes.

(21) Q In what percentage of cases would  
(22) you say that is the case?

(23) A 50 percent.

(24) Q Do you see on the referral that  
(25) physical therapy is recommended for a frequency

(1) DR. RICHARD G. HARVEY

(2) of two to three days per week for four to six  
(3) weeks?

(4) A Yes.

(5) Q What is your understanding as to  
(6) what would happen at the end of the six weeks?

(7) A Many times after the six weeks,  
(8) the patients are reevaluated to determine  
(9) whether or not more therapy is needed.

(10) Q When you say reevaluate, are you  
(11) talking about the referring provider or the  
(12) physical therapist at Harvey Family?

(13) A By both.

(14) Q If the physical therapist at  
(15) Harvey Family determines that more therapy is  
(16) needed, what is done?

(17) A They'll continue to do therapy.

(18) Q So for Derrick Norman, for  
(19) example, his treatment plan was for four to six  
(20) weeks, after six weeks of more physical therapy  
(21) was necessary, is it your understanding that  
(22) Mr. Norman would need a new prescription from  
(23) the referring provider?

(24) A I believe so.

(25) Q So is it fair to say that your

(1) DR. RICHARD G. HARVEY  
(2) therapist would tell the claimant that and the  
(3) claimant would then go to the referring provider  
(4) for an evaluation and to see if the referring  
(5) provider would then provide you a new  
(6) prescription?

(7) A I believe so.

(8) Q Are there any circumstances where  
(9) Harvey Family would provide services to a  
(10) claimant without a valid prescription?

(11) A There are times where they have  
(12) done therapy where the patient has not been able  
(13) to see a referring doctor and they needed  
(14) therapy and they would continue with therapy.

(15) Q Is it your understanding under  
(16) applicable law that is appropriate?

(17) MR. CHISARI: Objection. Don't  
(18) answer that. You're not an attorney.  
(19) You can't answer that question. I'm  
(20) going to instruct my client not to answer  
(21) that question.

(22) Q Are you aware if Harvey Family  
(23) needs a prescription during all periods in which  
(24) it is providing physical therapy services to a  
(25) claimant?

(1) DR. RICHARD G. HARVEY

(2) A I believe they should have a  
(3) prescription.

(4) Q If a patient's prescription  
(5) expired, would Harvey Family continue providing  
(6) physical therapy services to the claimant?

(7) A We recommend they get a new  
(8) referral.

(9) Q Are there any circumstances where  
(10) a claimant doesn't get a new referral?

(11) A Not that I'm aware of.

(12) Q What parts of his body did  
(13) Mr. Norman receive physical therapy treatment  
(14) on?

(15) A I believe it was -- from looking  
(16) at the records, it looks like his shoulder or --  
(17) well, it says -- yes, I believe it's his  
(18) shoulder.

(19) Q And that belief is based on you  
(20) looking at the documents in Exhibit I?

(21) A Yes.

(22) Q Do you have any firsthand  
(23) knowledge of the areas of his body that  
(24) Mr. Norman received physical therapy services  
(25) on?

(1) DR. RICHARD G. HARVEY

(2) A No.

(3) Q Dr. Harvey, I see you're looking  
(4) at the physical therapy progress notes in  
(5) determining the areas of his body that  
(6) Mr. Norman received physical therapy services  
(7) on; is that correct?

(8) A Yes.

(9) Q Who created the physical therapy  
(10) progress notes form?

(11) A I don't know.

(12) Q Did you have any input in the  
(13) creation of the form?

(14) MR. CHISARI: Objection. You did  
(15) ask all these questions in the beginning.

(16) MR. MARVIN: I actually asked that  
(17) question with respect to the initial  
(18) evaluation form, not with respect to the  
(19) initial therapy progress form, which is  
(20) different.

(21) MR. CHISARI: Okay.

(22) A I don't recall who formed this  
(23) note sheet.

(24) Q With respect to each section of  
(25) the form, I want to take you through each

(1) DR. RICHARD G. HARVEY

(2) section and you can let me know what is your  
(3) understanding of what each section is for, the  
(4) first section is S, can you tell me what that  
(5) section is for?

(6) A The patient's subjective  
(7) complaints.

(8) Q And the O, what is that section  
(9) for?

(10) A Their objective findings.

(11) Q And the A?

(12) A The assessment.

(13) Q And the P?

(14) A The progress.

(15) Q Let's talk about the first  
(16) physical therapy progress note, which is Harvey  
(17) 002590?

(18) A (Perusing). Did you say 002590?

(19) Q Yes.

(20) A Okay.

(21) Q Do you recognize the handwriting  
(22) on those physical therapy progress notes? And  
(23) I'm saying notes because each single page of  
(24) paper has three identical progress notes on  
(25) them.

(1) DR. RICHARD G. HARVEY

(2) Do you recognize the handwriting  
(3) on this piece of paper?

(4) A It's one of my physical  
(5) therapist's handwriting.

(6) Q Earlier you indicated you have two  
(7) people that perform physical therapy --

(8) A Right.

(9) Q -- Mr. Brual and Mr. Millares.  
(10) Which of the two completed these forms?

(11) A I don't know.

(12) Q Do you know what percentage of  
(13) physical therapy at Harvey Family was performed  
(14) by Mr. Brual and what percent was performed by  
(15) Mr. Millares?

(16) A Mr. Millares is an associate and  
(17) Mr. Brual is the main guy who does most of it  
(18) and Mr. Millares assists him.

(19) Q With respect to the first progress  
(20) note from August 3, 2012, what were the  
(21) subjective findings?

(22) A There was shooting pain, there was  
(23) intermittent pain, there was localized pain,  
(24) there was tenderness, stiffness.

(25) Q And you're determining that based

(1) DR. RICHARD G. HARVEY

(2) on the checkmarks next to the preprinted words  
(3) shooting, intermittent, radiating and localized?

(4) A Yes.

(5) Q What's written in handwriting  
(6) underneath that?

(7) A Looks like right shoulder with  
(8) restriction.

(9) Q With respect to the progress  
(10) notes, the handwritten notes next to that, what  
(11) are the handwritten notes?

(12) A It says isometrics. I'm not sure  
(13) what the other two words are.

(14) Q With respect to the isometrics, do  
(15) you have an understanding as to what that means?

(16) A Isometrics is an exercise.

(17) Q Could you offer any further  
(18) description of what isometrics are?

(19) A Isometrics is an exercise where  
(20) you do an exercise against resistance, but you  
(21) don't put the body part through range of motion.

(22) Q Do you know if Mr. Norman received  
(23) any physical therapy on his wrists or knees  
(24) during his time receiving physical therapy  
(25) treatment at Harvey Family?

(1) DR. RICHARD G. HARVEY

(2) A I don't know.

(3) Q Do you know if there's anyone who  
(4) would know?

(5) A Based on the records, it doesn't  
(6) say anything as far as the knee or the wrist.

(7) Q The initial physical therapy  
(8) evaluation form which we discussed, I believe  
(9) you indicated had objective findings of right  
(10) shoulder, both hands and both knees; is that  
(11) correct?

(12) A Yes.

(13) Q So do you know if physical therapy  
(14) was provided on the hands or the knees at Harvey  
(15) Family?

(16) A Looking at the progress notes, I  
(17) don't see that it was performed.

(18) Q Do you know why the initial  
(19) evaluation form as well as the prescription or  
(20) the referral for physical therapy would indicate  
(21) that physical therapy was needed on the knees  
(22) and the wrists yet physical therapy would not be  
(23) performed?

(24) MR. CHISARI: Objection. My  
(25) client said he didn't create the

(1) DR. RICHARD G. HARVEY  
(2) document, so he's not going to comment  
(3) about what the motivations behind who  
(4) wrote in the documents were. I'll  
(5) instruct him not to answer that question.

(6) Q Are you going to follow your  
(7) counsel's advice and not answer that question?

(8) A Yes.

(9) Q Do you know why Harvey Family  
(10) didn't provide physical therapy treatment to  
(11) Mr. Norman's knees and wrists?

(12) MR. CHISARI: Again, note my  
(13) objection. Same objection. I will  
(14) instruct my client not to answer it. He  
(15) wasn't the physical therapist. He is  
(16) reading from the records.

(17) Q Dr. Harvey, let's go further down  
(18) on the physical therapy progress notes to the  
(19) physical therapy program, do you see that  
(20) indicated on the notes?

(21) A Yes.

(22) Q With respect to the 8/3/2012  
(23) physical therapy progress notes, there's a  
(24) checkmark next to moist heat, 97010, can you  
(25) describe what that is or what that means?

(1) DR. RICHARD G. HARVEY

(2) A They put moist heat on his  
(3) shoulder.

(4) Q What exactly does that mean?

(5) A They put moist heat on his  
(6) shoulder.

(7) Q How is that done?

(8) A With a heating pad.

(9) Q How long is the moist heat applied  
(10) to the shoulder for?

(11) A I don't know.

(12) Q With respect to Mr. Norman, why  
(13) was moist heat put on his shoulder?

(14) A To relax the area so they can work  
(15) on it.

(16) Q What are the benefits of doing  
(17) that?

(18) A It helps the muscle with the range  
(19) of motion. When you relax the muscle, they can  
(20) do more work on the muscle with less pain.

(21) Q Is just a regular heating pad used  
(22) to perform that?

(23) A Hydrocollator pack it's called.

(24) Q Is that something that Harvey  
(25) Family purchases?

(1) DR. RICHARD G. HARVEY

(2) A We have them in the office.

(3) Q Are they reusable?

(4) A Yes.

(5) Q Is Hydrocollator the generic of  
(6) the heating pad or does it have --

(7) A That's what everybody calls it. I  
(8) don't know if that's generic or not. That's  
(9) what it's known as.

(10) Q Is it something you have to plug  
(11) in? Does it require electricity?

(12) A The Hydrocollator is a pad that  
(13) sits in hot water. The hot water is in like a  
(14) cabinet with -- a steel cabinet that's plugged  
(15) into the wall and the pad stay in that and when  
(16) the therapist needs the pad, they take it out,  
(17) put it in a cloth and they apply it to the body  
(18) part.

(19) Q With respect to the next code  
(20) which is checked off, electrical stimulation,  
(21) 97014, can you describe what the electrical  
(22) stimulation is?

(23) A Electrical stimulation is a  
(24) machine that applies current to the area and  
(25) that current helps to bring fresh blood to the

(1) DR. RICHARD G. HARVEY

(2) area to promote the healing process, at the same  
(3) time has an analgesic effect on the nerve.

(4) Q With respect to Mr. Norman, what  
(5) machine was used to apply the electrical  
(6) stimulation?

(7) MR. CHISARI: You mean the make  
(8) and the model?

(9) Q Do you know the make and model?

(10) A I believe Chattanooga is the make.  
(11) I don't know the model number.

(12) Q Is that a machine that Harvey  
(13) Family owns?

(14) A Yes.

(15) Q Did you personally buy that  
(16) machine?

(17) A Yes.

(18) Q Did you consult with the physical  
(19) therapists at Harvey Family prior to buying that  
(20) machine?

(21) A Yes.

(22) Q Do you recall who you consulted  
(23) with?

(24) A The initial therapist, which was  
(25) Ricardo Sanihan (phonetic).

(1) DR. RICHARD G. HARVEY

(2) Q And is it something that he  
(3) encouraged you to buy or did you recommend it?  
(4) How is it that you came to buy that particular  
(5) machine?

(6) A In my own practice as a  
(7) chiropractor, I use electrical stimulation. In  
(8) speaking to the therapist, told me that for the  
(9) stuff he does there are positive effects to it  
(10) and that's why we bought the machine.

(11) MR. CHISARI: He wants to know why  
(12) you picked that make and model.

(13) A I don't know exactly why that  
(14) particular model. That's the model the person I  
(15) purchased it from recommended.

(16) Q You mentioned Ricardo Sanihan a  
(17) moment ago. At the time that Mr. Norman  
(18) received his evaluation in May of 2012, Ricardo  
(19) Sanihan was the managing member of physical  
(20) therapists at Harvey Family; is that correct?

(21) A He wasn't in my office any more at  
(22) that time.

(23) Q When did he leave?

(24) A I don't recall exactly when he  
(25) left.

(1) DR. RICHARD G. HARVEY

(2) Q Who was the managing member of  
(3) physical therapists at Harvey Family in May of  
(4) 2012?

(5) A Bervin Brual.

(6) Q Mr. Sanihan began working with  
(7) Harvey Family at its inception in April of 2011,  
(8) correct?

(9) A Yes.

(10) Q How long after that did he cease  
(11) his involvement with Harvey Family?

(12) A I don't recall.

(13) Q Could you give an estimate?

(14) A Probably sometime in the summer of  
(15) 2011 I'm thinking that Bervin came to work with  
(16) me. He wasn't there for long, Mr. Sanihan.

(17) Q So the summer would be in July,  
(18) June or August?

(19) A Sometime around there, but I'm  
(20) thinking more towards the end of the summer, but  
(21) I couldn't give you an exact date.

(22) Q So was it in the summer of 2011  
(23) that Mr. Brual came to Harvey Family?

(24) MR. CHISARI: Objection. We went  
(25) through 122 pages of this the last time

(1) DR. RICHARD G. HARVEY  
(2) we were here. I'm going to instruct my  
(3) client -- we're not going to go through  
(4) this again. Reread the old transcript.  
(5) We went through eight hours of this.

(6) Q Dr. Harvey, do you recall  
(7) discussing the last time the second amended  
(8) operating agreement which we marked as  
(9) Exhibit F?

(10) A Yes.

(11) Q Do you recall discussing that  
(12) pursuant to the agreement, Mr. Brual became a  
(13) member of Harvey Family on August 9, 2012?

(14) MR. CHISARI: Again, Counsel, I'm  
(15) going to instruct him -- asked and  
(16) answered. We went through this for eight  
(17) hours. You have it in front of you.  
(18) There's no need to go through it again.

(19) MR. MARVIN: Counsel, he gave an  
(20) inconsistent answer to what --

(21) MR. CHISARI: He really said he  
(22) doesn't remember specific dates, so you  
(23) want to say August 9th, August 10th as  
(24) inconsistent, I don't think a judge or  
(25) anybody else would find it as

(1) DR. RICHARD G. HARVEY

(2) inconsistent. So let's move on.

(3) A He came to work for me. The  
(4) operating agreement wasn't amended until 2012.

(5) Q So he came to work for you in the  
(6) summer of 2011, correct?

(7) A I believe so.

(8) Q And in the summer of 2012, the  
(9) operating agreement was amended?

(10) A I believe so.

(11) Q So he became the managing member  
(12) of Harvey Family responsible for physical  
(13) therapy in August of 2012; is that correct?

(14) A 2011.

(15) MR. CHISARI: Counsel, what he's  
(16) telling you is they didn't get around to  
(17) doing the paperwork, but he started being  
(18) the managing member in August of 2011.

(19) Q Do you recall when you notified  
(20) the Department of Education that Mr. Brual would  
(21) be the managing member of Harvey Family  
(22) responsible for physical therapy?

(23) A No, I don't.

(24) Q Do you recall if it was at or  
(25) about the time he began working for Harvey

(1) DR. RICHARD G. HARVEY

(2) Family?

(3) A I don't recall.

(4) Q From the time that Mr. Sanihan  
(5) left Harvey Family in the summer of 2011, from  
(6) that point forward I should say, did he have any  
(7) involvement whatsoever in the operation or  
(8) management of Harvey Family?

(9) A No.

(10) Q Did he receive any profits or  
(11) distributions or other monies from Harvey Family  
(12) after that time?

(13) A No. Any profit that he was due,  
(14) he never received because when he left, I wasn't  
(15) able to get in touch with him.

(16) Q Dr. Harvey, next on the physical  
(17) therapy progress notes are therapeutic  
(18) exercises, 97110, do you see that?

(19) A Yes.

(20) Q Do you know what therapeutic  
(21) exercises were performed with Mr. Norman?

(22) A I don't know what you would call  
(23) them, but there were times when I would walk by  
(24) and I would see him doing exercises where he  
(25) uses a pulley system to do exercises and also

(1) DR. RICHARD G. HARVEY

(2) uses Thera-Bands to do exercises.

(3) Q With respect to the actual  
(4) progress note we're talking about specifically,  
(5) do you know which therapeutic exercises he did  
(6) that day?

(7) A I know that they have them do  
(8) pulley exercises and Thera-Band exercises.

(9) Q You're saying as a general rule  
(10) that's what they do?

(11) A That's what I've seen them do with  
(12) him, yes.

(13) Q Do you know if he actually did it  
(14) on that day?

(15) A I couldn't say 100 percent for  
(16) sure, but I would say 99 percent, yes.

(17) Q The next indication under the  
(18) physical therapy program is myofacial release,  
(19) 97140, do you see that?

(20) A Yes.

(21) Q Can you explain what that is?

(22) A I believe that's with their hands  
(23) they work on muscle to try and reduce some of  
(24) the trigger-points.

(25) Q Dr. Harvey, with respect to

(1) DR. RICHARD G. HARVEY

(2) Mr. Norman, do you know what physical therapy  
(3) services were billed for --

(4) A No, I don't.

(5) Q -- on the days he was treated?

(6) A No.

(7) Q Did you have any role in selecting  
(8) the services which were billed for on the days  
(9) he was treated?

(10) A No.

(11) Q Did you have any role in selecting  
(12) the code, the CPT codes that were used in  
(13) billing documents with respect to Mr. Norman?

(14) A No.

(15) Q Do you know who chose the codes  
(16) which were used to bill for Mr. Norman.

(17) A I believe my biller.

(18) Q Do you know based on what the  
(19) biller selected the codes?

(20) A I guess based on what the services  
(21) were performed.

(22) Q And that would be as reflected on  
(23) the progress notes?

(24) A Yes.

(25) Q Dr. Harvey, you can refer to

(1) DR. RICHARD G. HARVEY

(2) Exhibit H, the billing records for Mr. Norman.

(3) Is it fair to say that Harvey

(4) Family billed for CPT codes 97014, 97110 and

(5) 97140, modifier 59 on each day that Mr. Norman

(6) received physical therapy services at Harvey

(7) Family?

(8) A Right now, I'm looking at

(9) chiropractor.

(10) Q If you look further within the

(11) exhibit, you'll see the physical therapy bills.

(12) A (Perusing). The physical therapy

(13) bills, what was billed was 97014, 97140 with

(14) modifier 59 and 97110.

(15) Q Would you agree that those three

(16) codes were billed on each day that Mr. Norman

(17) received physical therapy services at Harvey

(18) Family?

(19) A Yes.

(20) Q Is it common in physical therapy

(21) to perform those same three procedures as

(22) reflected in those codes on a claimant during

(23) the course of his treatment?

(24) A I believe so.

(25) Q What's that belief based on?

(1) DR. RICHARD G. HARVEY

(2) A Based upon what the service that  
(3) was provided and what the patient required.

(4) Q In terms of what Mr. Norman  
(5) required, what's the basis of your belief as to  
(6) what he required during the course of his  
(7) physical therapy treatment?

(8) A Based on the physical therapist's  
(9) findings, he determined what procedures to do on  
(10) each visit.

(11) Q Again, that's just based on your  
(12) review of the documents and you have no  
(13) firsthand knowledge of that information,  
(14) correct?

(15) A I just know that that's the way  
(16) it's done.

(17) Q You'll notice on the progress  
(18) notes in Exhibit I there are other potential CPT  
(19) codes which would include ultrasound, paraffin  
(20) bath, therapeutic activities and massage, do you  
(21) see that?

(22) A Yes.

(23) Q Are you aware if those procedures  
(24) were performed on any of the claimants which are  
(25) the subject of today's EUO?

(1) DR. RICHARD G. HARVEY

(2) A Not that I'm aware of.

(3) Q Just to clarify, are you not aware  
(4) if they were performed or you believe they  
(5) weren't performed?

(6) A I don't know if they were  
(7) performed. I know on Mr. Norman they weren't.  
(8) On the other patients, I don't know.

(9) Q If you review the documents, would  
(10) that refresh your recollection as to if they  
(11) were performed?

(12) A By looking at the documents, I  
(13) could see exactly what's performed and I would  
(14) know.

(15) Q Dr. Harvey, turning back to  
(16) Exhibit I in the first prescription for the date  
(17) July 25th, it recommends physical therapy for  
(18) four to six weeks, do you see that?

(19) A I see one that says July 25th,  
(20) yes.

(21) Q I'm sorry, May 25th.

(22) A Yes, I see May 25th.

(23) Q And do you see the next  
(24) prescription which is 002576 dated July 25th?

(25) A Yes.

(1) DR. RICHARD G. HARVEY

(2) Q Would you agree that for the  
(3) prescription dated May 25, 2012, the last day of  
(4) treatment pursuant to that prescription would be  
(5) six weeks later which would be July 6, 2012?

(6) A Yes.

(7) Q Based on the record you produced,  
(8) is it fair to say that the next prescription for  
(9) physical therapy services was on July 25, 2012?

(10) A Yes, based on what I see in front  
(11) of me, yes.

(12) Q Is what you see in front of you a  
(13) complete file for physical therapy services from  
(14) Harvey Family as you produced?

(15) A Yes.

(16) Q Are you aware if Mr. Norman  
(17) received any physical therapy services between  
(18) July 6, 2012 and July 25, 2012?

(19) A Without looking at the billing  
(20) records or the progress notes, I don't know. I  
(21) could look at them and see.

(22) Q Okay, feel free.

(23) A (Perusing). He had therapy on  
(24) July 6th, July 9th, July 11th, July 13th,  
(25) July 16th, July 18th and it looks like July

(1) DR. RICHARD G. HARVEY

(2) 25th.

(3) Q Based on your review of their  
(4) notes, there were at least four instances where  
(5) Mr. Norman received physical therapy  
(6) notwithstanding that there was no prescription?

(7) A Yes.

(8) Q Do you know why that is?

(9) MR. CHISARI: As he answered  
(10) 20 minutes earlier, there were a bevy of  
(11) reasons why they provided services. He's  
(12) already answered that question, without  
(13) prescription. He answered it. He'll  
(14) answer it again, but again, he'll answer  
(15) like he did. If you ask her to read it  
(16) back -- sometimes they can't get to the  
(17) doctor to get another prescription. Go  
(18) ahead, Dr. Harvey, let's waste some more  
(19) time.

(20) A They performed the services, they  
(21) felt that the patient needed physical therapy.

(22) Q Is it Harvey Family's practice in  
(23) those instances where the physical therapist  
(24) feels in his own volition that the patient needs  
(25) physical therapy services to perform those

(1) DR. RICHARD G. HARVEY  
(2) services even without a prescription?

(3) MR. CHISARI: Counsel, are you  
(4) going to ask every question twice today?  
(5) Because you asked this whole series of  
(6) questions in the beginning when you went  
(7) through the referrals. You're going to  
(8) ask him again?

(9) MR. MARVIN: I've asked it again.

(10) MR. CHISARI: Right, and I'm going  
(11) to instruct my client to stop answering  
(12) duplicate questions. He answered it at  
(13) length earlier on. I'll instruct him not  
(14) to answer it. Move onto something else.

(15) Q You can answer the question.

(16) A I'll give you a quick answer:

(17) Many times the patient will tell the therapist  
(18) that they have it, they forgot to bring it that  
(19) day. The therapist, because of his expertise,  
(20) knows that they need therapy and he'll perform  
(21) therapy when they need therapy.

(22) Q With respect to Mr. Norman, do you  
(23) know the reasons why therapy was performed on  
(24) those days where there was no prescription in  
(25) place?

(1) DR. RICHARD G. HARVEY

(2) A He required therapy on those days.

(3) Q Do you know specifically why?

(4) A Because of his injury to his  
(5) shoulder.

(6) Q Do you have firsthand knowledge of  
(7) that or are you assuming that based on the  
(8) progress notes?

(9) A I know that based on the notes and  
(10) I know the case.

(11) Q You said a second ago that there  
(12) were different reasons why a patient might need  
(13) physical therapy without a prescription or might  
(14) receive it without a prescription, it might be  
(15) in the physical therapist's opinion, perhaps the  
(16) claimant forgot the prescription at home, so you  
(17) indicated there could be a number of reasons,  
(18) correct?

(19) A Yes.

(20) Q So with respect to Mr. Norman,  
(21) what was the reason?

(22) MR. CHISARI: He just answered it.

(23) Do you not listen to anything he says?

(24) A The reason is the physical  
(25) therapist felt he needed therapy.

(1) DR. RICHARD G. HARVEY

(2) Q What do you base that answer on?

(3) A Based on the patient's condition  
(4) and based on the notes that I'm seeing.

(5) Q Do you know if Mr. Norman had a  
(6) prescription for that time period which he  
(7) forgot and didn't provide it to Harvey Family?

(8) A That, I don't know.

(9) Q Why didn't Mr. Norman receive  
(10) ultrasound as part of his physical therapy  
(11) treatment?

(12) A I believe because the therapist  
(13) felt that he didn't need it.

(14) Q Do you know why the therapist felt  
(15) he didn't need it?

(16) A I don't know exactly why, no.

(17) Q With respect to the massage and  
(18) the paraffin bath and therapeutic activities, do  
(19) you know why Mr. Norman didn't receive those  
(20) treatments as part of his treatment regime?

(21) A Again, I believe it's because the  
(22) therapist believed he didn't require those  
(23) services.

(24) Q Do you have any firsthand  
(25) knowledge of that?

(1) DR. RICHARD G. HARVEY

(2) A No.

(3) Q With respect to all of the  
(4) claimants which are the subject of today's EUO  
(5) which received physical therapy services, do you  
(6) have any firsthand knowledge as to why they  
(7) received certain treatments as opposed to other  
(8) treatments as reflected on the progress notes?

(9) A I don't know if it's my firsthand  
(10) knowledge, but my knowledge is that the  
(11) therapist determined that these were the  
(12) services that would most allow them to have a  
(13) speedy recovery.

(14) Q That would be based on the  
(15) therapist's examination of the patient?

(16) A Yes.

(17) Q Do you have any firsthand  
(18) knowledge of those examinations?

(19) A Just from the records that I'm  
(20) seeing.

(21) Q Let's finish up with Mr. Norman  
(22) before we move on to the next claimant in terms  
(23) of the records we've already marked. So let's  
(24) turn to Exhibit J, which are the acupuncture  
(25) notes for Mr. Norman.

(1) DR. RICHARD G. HARVEY

(2) Dr. Harvey, if you could first  
(3) turn to the initial evaluation acupuncture form.

(4) MR. MARVIN: Off the record,  
(5) please.

(6) (Discussion held off the record.)

(7) Q Dr. Harvey, who created this  
(8) initial comprehensive examination acupuncture  
(9) report?

(10) A I don't recall.

(11) Q Do you recall if you had any input  
(12) in the creation of the report?

(13) A I don't recall.

(14) Q Who performed the initial  
(15) acupuncture evaluation on Mr. Norman?

(16) A I believe the initial evaluation  
(17) was performed by Mr. Sun Lee (phonetic).

(18) Q Is that belief based on your  
(19) review of the initial comprehensive examination  
(20) report?

(21) A Yes.

(22) Q How long did the initial  
(23) comprehensive examination take?

(24) A That, I don't know.

(25) Q On the initial comprehensive

(1) DR. RICHARD G. HARVEY  
(2) examination report do you see where it says TCM?

(3) A Yes.

(4) Q Could you explain what that is?

(5) A This has something to do with  
(6) their skin coloring.

(7) Q On this form wiry, purple and gray  
(8) are circled, so it's your understanding that  
(9) their skin coloring was wiry, purple and gray?

(10) A No. I take that back. TCM looks  
(11) like first his pulse, so wiry was his pulse, was  
(12) the patient's pulse, and then they do a tongue  
(13) check and there are different colors and in this  
(14) patient's instance the acupuncturist circled  
(15) gray and purple.

(16) Q What does wiry mean for pulse?

(17) A That, I don't know.

(18) Q Do you know what TCM stands for?

(19) A No.

(20) Q Could you please turn to page two  
(21) of the acupuncture initial evaluation form.

(22) A Yes.

(23) Q Do you see it says TCM diagnosis?

(24) A Yes.

(25) Q And the first box which is checked

(1) DR. RICHARD G. HARVEY

(2) is Qi stagnation, can you explain what that is?

(3) A I'm unable to explain what that  
(4) is.

(5) Q Next to that is blood stagnation,  
(6) also checked, can you explain what that is?

(7) A I'm unable to explain what that  
(8) is.

(9) MR. CHISARI: Dr. Harvey, are you  
(10) a licensed acupuncturist?

(11) THE WITNESS: No.

(12) Q I'll read the remaining four  
(13) indications of damp accumulation, Bi-syndrome,  
(14) Qi deficiency and Eun deficiency, can you  
(15) explain what any of those four terms mean?

(16) A No.

(17) Q Directly under that you'll see  
(18) meridian points used in therapy, do you see  
(19) that?

(20) A Yes.

(21) Q Could you explain what meridian  
(22) points are?

(23) A My understanding is meridian  
(24) points are different points along the nerve that  
(25) acupuncturists work on to help patients with

(1) DR. RICHARD G. HARVEY

(2) their symptomology.

(3) Q Underneath the meridian points  
(4) used in therapy, neck pain is circled, do you  
(5) see that?

(6) A Yes.

(7) Q And next to neck pain it says  
(8) GB20, 21, SI3, UB10, 11, do you know what those  
(9) indications are?

(10) A I believe those are meridian  
(11) points.

(12) Q What is that belief based on?

(13) A I've seen these terms before, but  
(14) I couldn't say the exact meridian points they  
(15) are, but I believe they are meridian points.

(16) Q Do you see under meridian points  
(17) it says treatment plan?

(18) A Yes.

(19) Q And it indicates what consists of  
(20) three to four treatments per week for a  
(21) treatment cycle of ten treatments?

(22) A Yes, I see that.

(23) Q What does a treatment cycle  
(24) consist of?

(25) A I don't know.

(1) DR. RICHARD G. HARVEY

(2) Q Dr. Harvey, if you would please  
(3) turn to the first SOAP note on 5/19/2012.

(4) A Yes.

(5) Q Did you create this template that  
(6) this SOAP note is based on?

(7) A Myself, personally, no.

(8) Q Did you have any input in the  
(9) creation of this SOAP note, the template?

(10) A No.

(11) Q Do you know who did create the  
(12) template for the SOAP note?

(13) A No.

(14) Q What does "SOAP" in SOAP note  
(15) stand for?

(16) A Subjective/objective assessment  
(17) and progress.

(18) Q It is your understanding that  
(19) these SOAP notes were prepared contemporaneously  
(20) with the acupuncture services which were  
(21) provided to Mr. Norman?

(22) A Yes.

(23) Q And it is your understanding that  
(24) these SOAP notes accurately reflect the  
(25) acupuncture services provided to Mr. Norman?

(1) DR. RICHARD G. HARVEY

(2) A Yes.

(3) Q Did Mr. Norman's acupuncture plan  
(4) change over the course of his treatment?

(5) A I don't know. I know that he  
(6) didn't -- he didn't do acupuncture for that  
(7) long, so I assume it changed because he was  
(8) discharged from acupuncture.

(9) Q Do you see on the May 19, 2012  
(10) SOAP note an acupuncture point of UB10?

(11) A Yes.

(12) Q And where is that acupuncture  
(13) point?

(14) A Personally, I don't know where the  
(15) point is.

(16) Q There's also an acupuncture point  
(17) of UB11, where is that acupuncture point?

(18) A That, I don't know.

(19) Q How about UB23, do you know where  
(20) that acupuncture point is?

(21) A No.

(22) Q How about acupuncture point D4?

(23) A No, I don't know where it is.

(24) Q Also on the first SOAP note you'll  
(25) see that CPT code 97810, initial 15 minutes

(1) DR. RICHARD G. HARVEY

(2) without electrical stimulation is circled, do  
(3) you see that?

(4) A Yes.

(5) Q What's your understanding of what  
(6) that means?

(7) A That acupuncture was used without  
(8) electrical stimulation.

(9) Q How is the acupuncture performed?

(10) A The acupuncturist uses needles on  
(11) acupuncture points.

(12) Q Do you see also under CPT code  
(13) 97811, additional 15 minutes without electrical  
(14) stimulation is circled?

(15) A Yes.

(16) Q How was it determined that  
(17) Mr. Norman needed an additional 15 minutes of  
(18) acupuncture on May 19, 2012?

(19) A It's based on the acupuncturist's  
(20) findings on each visit.

(21) Q So the acupuncturist is the person  
(22) that determined that an additional 15 minutes  
(23) was needed, in your opinion?

(24) A Yes.

(25) Q Do you know what that

(1) DR. RICHARD G. HARVEY

(2) acupuncturist's determination was based upon?

(3) A No.

(4) Q Would that be the same with  
(5) respect to each SOAP note for Mr. Norman as well  
(6) as each SOAP note for every claimant, which is  
(7) the subject of this EUO, where an additional 15  
(8) minutes without electrical stimulation under CPT  
(9) code 97811 is indicated?

(10) A Yes.

(11) Q The next CPT code listed on the  
(12) 5/19/2012 SOAP note is 97026, infrared lamp.  
(13) Can you describe what that is?

(14) A It's basically a special lamp  
(15) that's used for heating purposes.

(16) Q How is the service performed in  
(17) connection with acupuncture?

(18) A The lamp is used over the points  
(19) that the acupuncturist is using the needle on.

(20) Q What is the purpose of the lamp  
(21) being used?

(22) A I believe it's to promote the  
(23) healing process.

(24) Q What is that belief based on?

(25) A Conversations in the past with the

(1) DR. RICHARD G. HARVEY

(2) acupuncturist.

(3) Q Which acupuncturist are you  
(4) referring to?

(5) A Sun Lee.

(6) Q Also circled is code 97140,  
(7) trigger-points myofacial release, do you see  
(8) that?

(9) A Yes.

(10) Q What does that code mean?

(11) A That's the code that the  
(12) acupuncturist works on with their hands to help  
(13) reduce pain.

(14) Q I believe we already talked about  
(15) that code as used by the physical therapist.

(16) Is it the same procedure being  
(17) used?

(18) A I believe so.

(19) Q Do you know if the acupuncturist  
(20) has to be a licensed message therapist in order  
(21) to perform that service?

(22) MR. CHISARI: Don't answer that.  
(23) That calls for a legal conclusion.

(24) A I don't know anyway.

(25) Q Was Sun Lee a licensed physical

(1) DR. RICHARD G. HARVEY

(2) therapist at the time she worked at Harvey

(3) Family?

(4) A I don't know.

(5) Q Dr. Harvey, if you could turn to  
(6) the SOAP note for August 9, 2012, please.

(7) A (Perusing). Yes.

(8) Q If you notice, this SOAP note is  
(9) slightly different from the SOAP note from May  
(10) 19, 2012?

(11) A Yes.

(12) Q Do you know how this August 9,  
(13) 2012 SOAP note template came to be used at  
(14) Harvey Family?

(15) A The acupuncturist, Mun, is I  
(16) believe the form he chose to use.

(17) Q On the form there are various  
(18) acupuncture points indicated, which some have  
(19) checkmarks and some don't, do you see that?

(20) A Yes.

(21) Q With respect to Mr. Norman,  
(22) UB23/24 is checked, do you see that?

(23) A Yes.

(24) Q What is the UB23/24 acupuncture  
(25) points?

(1) DR. RICHARD G. HARVEY

(2) A I believe those are meridian  
(3) points.

(4) Q On what part of the body?

(5) A I don't know.

(6) Q The next indication on the  
(7) acupuncture point is A-S-H-I, do you know what  
(8) that means?

(9) A No.

(10) Q And the next point is GB21/UB10,  
(11) do you have an indication of what that point is?

(12) A I believe that's a meridian point.

(13) Q On what part of the body?

(14) A I believe either the neck -- I'm  
(15) sorry, I don't know.

(16) Q And the indication for L1,11/L14,  
(17) what does that mean?

(18) A I believe it's a meridian point.

(19) Q What's that belief based on?

(20) A Just from the acupuncture points,  
(21) I believe all these are meridian points.

(22) Q On what part of the body?

(23) A I don't know.

(24) Q D-U-B-I, as indicated on the  
(25) acupuncture point, is your answer the same with

(1) DR. RICHARD G. HARVEY

(2) respect to DUBI?

(3) A Yes.

(4) Q How was it determined which  
(5) acupuncture points Mr. Norman needed in  
(6) furtherance of his treatment?

(7) A That, I don't know.

(8) Q With respect to all the claimants  
(9) which are the subject of today's EUO, do you  
(10) know how the acupuncture points were determined?  
(11) Would your answer be the same?

(12) A I don't know exactly how they're  
(13) determined.

(14) Q In terms of the billing for the  
(15) acupuncture services provided to Mr. Norman,  
(16) would you agree that the four codes we  
(17) previously discussed, 97810, 97811, 97026 and  
(18) 97140 were all used on each day that he received  
(19) acupuncture treatment? Feel free to refer to  
(20) Exhibit H if you need to.

(21) A I'm sorry, can you repeat the  
(22) question, please?

(23) MR. MARVIN: Could you read it  
(24) back.

(25) (Whereupon, the reporter read the

(1) DR. RICHARD G. HARVEY

(2) record.)

(3) A Yes, I believe so.

(4) Q Are you aware if any of the other  
(5) codes indicated on the SOAP note were ever  
(6) billed for acupuncture services provided through  
(7) Harvey Family to any claimant which is the  
(8) subject of today's EUO?

(9) A That, I don't know.

(10) Q In May of 2012, Sun Lee provided  
(11) acupuncture services, why didn't Paul Wong, who  
(12) was the managing member at that time, perform  
(13) the services?

(14) A He had left the practice and Sun  
(15) Lee took over.

(16) Q When did Mr. Wong leave the  
(17) practice?

(18) A I don't know exactly when he left.

(19) Q Are you able to approximate?

(20) A No.

(21) MR. CHISARI: Again, we can go  
(22) back to the old transcript, I'm sure it's  
(23) in there.

(24) Q Counsel referenced the old  
(25) transcript, which I believe references again the

(1) DR. RICHARD G. HARVEY  
(2) operating agreement which is August 2012 when  
(3) Mr. Wong left as the managing member of Harvey  
(4) Family; is that correct? Do you recall that?

(5) A I believe from the paperwork, yes.

(6) MR. CHISARI: As he answered  
(7) earlier, that's when this document was  
(8) filed, not necessarily when any of those  
(9) people left. People left before that  
(10) document was filed.

(11) Q So you said a few moments ago that  
(12) Sun Lee took over when Mr. Wong left?

(13) A Yes.

(14) Q Do you mean that she took over  
(15) performing acupuncture services or she took over  
(16) as the managing member --

(17) A She took over as a managing member  
(18) becoming a part of my practice.

(19) MR. CHISARI: I need to take a  
(20) break.

(21) MR. MARVIN: Counsel, indicated he  
(22) needs a break, so we'll do that.

(23) (Whereupon, a brief recess was  
(24) taken.)

(25) MR. MARVIN: What was the last

(1) DR. RICHARD G. HARVEY

(2) question?

(3) (Whereupon, the reporter read the  
(4) record.)

(5) Q Dr. Harvey, before we went on  
(6) break, we were discussing Sun Lee. You  
(7) indicated she took over as the managing member  
(8) of Harvey Family; is that right?

(9) A Yes.

(10) Q When did she take over as the  
(11) managing member of Harvey Family?

(12) A I don't know the exact date.

(13) Q Were any documents executed  
(14) transferring ownership or transferring the  
(15) managing member responsibilities from Mr. Wong  
(16) to Sun Lee?

(17) A I don't recall.

(18) Q Was Sun Lee ever added to Harvey  
(19) Family's bank account?

(20) A I don't recall.

(21) Q Did Sun Lee ever execute an  
(22) operating agreement?

(23) A I don't recall.

(24) Q Did you ever notify the New York  
(25) State Department of Education that Sun Lee would

(1) DR. RICHARD G. HARVEY  
(2) be taking over as a managing member of Harvey  
(3) Family?

(4) A I don't recall.

(5) Q As managing member of Harvey  
(6) Family, what were Ms. Lee's responsibilities?

(7) MR. CHISARI: Objection. We  
(8) actually went through this in 118 pages  
(9) in eight hours. I can probable go to the  
(10) transcript and pull out this line of  
(11) questioning. Can we move on or waste  
(12) more time?

(13) MR. MARVIN: Counsel, with respect  
(14) to Ms. Lee, there is no testimony in the  
(15) first day --

(16) MR. CHISARI: You went through  
(17) every person --

(18) MR. MARVIN: May I finish? With  
(19) respect to Ms. Lee, there is no testimony  
(20) in the first day of questioning about  
(21) Ms. Lee being a managing member of Harvey  
(22) Family. So I'm asking the questions now.

(23) MR. CHISARI: I think what it was  
(24) is Mr. Wong continued to be a managing  
(25) member, but he was unable to come to the

(1) DR. RICHARD G. HARVEY

(2) practice and that's when Ms. Lee took  
(3) over.

(4) Q Dr. Harvey, when you say "take  
(5) over," are you referring to the performance of  
(6) acupuncture services or becoming a managing  
(7) member?

(8) A The performance of acupuncture  
(9) services.

(10) Q Do you recall when Mr. Wong ceased  
(11) performing acupuncture services for Harvey  
(12) Family?

(13) A No, I don't.

(14) Q You're saying after he stopped  
(15) performing acupuncture services for Harvey  
(16) Family, he still functioned as a managing member  
(17) of Harvey Family?

(18) A I believe for a while he was still  
(19) on the documents.

(20) Q Other than being on the documents,  
(21) what functions did he perform as a managing  
(22) member of Harvey Family?

(23) A He wasn't there, so he really was  
(24) not involved.

(25) Q So from the point that Mr. Wong

(1) DR. RICHARD G. HARVEY  
(2) stopped performing acupuncture services at  
(3) Harvey Family, is it fair to say he had no  
(4) involvement at all with Harvey Family?

(5) A Yes.

(6) Q Talking about Derrick Norman in  
(7) May of 2012 when Sun Lee provided his  
(8) acupuncture services, who was the  
(9) acupuncturist's managing member responsible for  
(10) overseeing the acupuncture portion of Harvey  
(11) Family's practice?

(12) A Since she was in my practice, she  
(13) was responsible.

(14) Q Maybe I'll rephrase the question.  
(15) Who was the managing member  
(16) responsible for overseeing the acupuncture  
(17) portion of Harvey Family's practice?

(18) MR. CHISARI: He just answered, he  
(19) said her.

(20) A Ms. Lee was the one overseeing  
(21) everything for acupuncture.

(22) Q But she was not a managing member,  
(23) correct?

(24) A I don't know when she became a  
(25) member.

(1) DR. RICHARD G. HARVEY

(2) Q But it's your testimony at some  
(3) point she did become a member?

(4) A I believe so. I don't know  
(5) exactly when each one took over.

(6) Q With respect to Ms. Lee and the  
(7) acupuncture points that she performed services  
(8) on for Mr. Norman, and you indicated you didn't  
(9) know what those points were, do you know if she  
(10) knows about the treatment plan provided to  
(11) Mr. Norman?

(12) A Yes.

(13) Q Would she have the most knowledge  
(14) about the treatment plan provided to  
(15) Mr. Norman?

(16) A Yes.

(17) Q Would the same be true with  
(18) respect to the acupuncture services provided by  
(19) Mun Shieh?

(20) A Yes.

(21) MR. MARVIN: M-U-N, S-H-I-E-H.

(22) Q Did Ms. Lee ever ask to speak to  
(23) your health care attorney, Mr. Cherket  
(24) (phonetic), regarding her becoming a managing  
(25) member of Harvey Family?

(1) DR. RICHARD G. HARVEY

(2) A I don't recall.

(3) Q Did Ms. Lee ever ask to look at  
(4) the books and records of Harvey Family prior to  
(5) becoming managing member?

(6) A I don't recall.

(7) Q Did Ms. Lee ever receive a portion  
(8) of the profits of Harvey Family?

(9) A Yes.

(10) Q When was that?

(11) A I don't know exactly when.

(12) Q Was it during Ms. Lee's time  
(13) working for Harvey Family?

(14) A I don't know.

(15) Q How much of the profits of Harvey  
(16) Family did Ms. Lee receive?

(17) A It was either one or two percent.

(18) Q Are there any records or documents  
(19) memorializing an agreement to provide Ms. Lee  
(20) with one or two percent?

(21) A Not that I'm aware of.

(22) Q Was it a verbal agreement?

(23) A That, definitely, yes.

(24) Q Did Ms. Lee also receive a salary  
(25) from Harvey Family?

(1) DR. RICHARD G. HARVEY

(2) A Yes.

(3) Q How much was her salary?

(4) A I believe it was approximately  
(5) \$700.

(6) Q And is that something that you  
(7) determined she should be paid?

(8) A We discussed it together and that  
(9) was the figure that we came up with.

(10) Q Was Ms. Lee a W-2 employee?

(11) A I don't recall.

(12) Q Do you recall how you met Ms. Lee?

(13) A No.

(14) Q Dr. Harvey, at the first day of  
(15) testimony, you indicated there was a third  
(16) operating agreement for Harvey Family, was  
(17) substituted Jane Membro (phonetic) as the  
(18) acupuncturist managing member?

(19) A Yes.

(20) Q Are you in possession of that  
(21) operating agreement?

(22) A I have it in my office, yes.

(23) MR. MARVIN: Again, Counsel, we'll  
(24) call for the production of the agreement.

(25) MR. CHISARI: Like I repeat, put

(1) DR. RICHARD G. HARVEY

(2) it in writing.

(3) Q Is that the third operating  
(4) agreement for Harvey Family?

(5) A I don't know what number it is.

(6) Q I just want to go back to the  
(7) physical therapy for a moment with respect to  
(8) Mr. Norman.

(9) You indicated that there were  
(10) certain areas of his physical therapy treatment  
(11) that you had no knowledge about, correct?

(12) A Yes.

(13) Q Who would have knowledge regarding  
(14) those areas which you stated you have no  
(15) knowledge about?

(16) A The physical therapist.

(17) Q That would be Mr. Brual?

(18) A Yes.

(19) MR. MARVIN: Off the record,  
(20) please.

(21) (Discussion held off the record.)

(22) Q Dr. Harvey, with respect to all  
(23) the claimants which received physical therapy  
(24) services that are the subject of today's EUO, do  
(25) you have full and complete knowledge of the

(1) DR. RICHARD G. HARVEY  
(2) services they received as well as the billing  
(3) codes that were selected for those services?

(4) A Yes.

(5) Q And that includes Mr. Norman?

(6) MR. CHISARI: Counsel, let's go  
(7) off the record.

(8) MR. MARVIN: Okay.

(9) (Discussion held off the record.)

(10) Q Dr. Harvey, with respect to the  
(11) specific physical therapy services that were  
(12) performed on the claimants, which are the  
(13) subject of this EUO, do you know why those  
(14) specific physical therapy services were chosen  
(15) or performed?

(16) A They were chosen because the  
(17) therapist -- those were the services that would  
(18) give the patient the best opportunity to get  
(19) well.

(20) Q What was the therapist's belief  
(21) based on?

(22) A His expertise as a therapist.

(23) Q Do you have any personal knowledge  
(24) as to why certain physical therapy services were  
(25) performed on the claimants, which are the

(1) DR. RICHARD G. HARVEY  
(2) subject of this EUO, as opposed to different  
(3) services?

(4) A Can you repeat that?

(5) MR. CHISARI: Objection.

(6) MR. MARVIN: Can you read back the  
(7) question.

(8) (Whereupon, the reporter read the  
(9) record.)

(10) A My knowledge would be, again,  
(11) these were the services that the therapist  
(12) believed would give the patient the best  
(13) opportunity to get well.

(14) MR. MARVIN: Could we have this  
(15) marked, please.

(16) (Whereupon, photocopies of  
(17) chiropractic progress notes for Derrick  
(18) Norman was marked Exhibit K for  
(19) identification, this date.)

(20) Q Dr. Harvey, let's turn to the  
(21) chiropractic services which you performed with  
(22) respect to Derrick Norman, who we have  
(23) discussed, in part, during your first day of  
(24) testimony, you testified that you performed  
(25) mechanical traction, trigger-point therapy and

(1) DR. RICHARD G. HARVEY

(2) spinal adjustments on him. Do you recall that  
(3) testimony?

(4) A Yes.

(5) Q You also testified that you  
(6) generally performed those three procedures on  
(7) patients during your evaluation of them,  
(8) correct?

(9) A During my adjustments of them.

(10) Q I'm sorry, not your evaluation,  
(11) but during your follow-up adjustments or visits  
(12) with them?

(13) A Yes.

(14) Q What sort of record do you keep to  
(15) document what services you perform on a claimant  
(16) when you treat them?

(17) A I have a day sheet that I use, a  
(18) progress sheet that I use.

(19) Q Is it fair to say that your biller  
(20) at your office does the billing based upon your  
(21) progress sheet?

(22) A Yes.

(23) Q So you perform the services and  
(24) then provide the sheet to the biller who then  
(25) uses what you indicate to perform the billing,

(1) DR. RICHARD G. HARVEY

(2) correct?

(3) A When patients see me, I'll mark  
(4) down on the sheet what was performed and then  
(5) the girl that sits at the front desk will enter  
(6) it into the computer and then on some other date  
(7) the biller will send out the bill.

(8) Q Just to be clear, your biller  
(9) essentially prints out what was already entered  
(10) into the computer?

(11) A Correct.

(12) Q Do you recall at your first day of  
(13) testimony we also discussed the billing codes  
(14) which Harvey Family uses for the services which  
(15) you perform as part of your chiropractic  
(16) treatments. You indicated for spinal  
(17) manipulation you use code 98940 or 98941, for  
(18) trigger-points you use code 97125 and for  
(19) mechanical traction most of the time Harvey  
(20) Family uses 97110, which Harvey Family then  
(21) realized was the wrong code and you subsequently  
(22) substituted the correct code, do you recall that  
(23) testimony?

(24) A Yes.

(25) Q If you could take a look at

(1) DR. RICHARD G. HARVEY  
(2) Exhibit H, which has been previously marked,  
(3) would it be fair to say based upon the bills on  
(4) each day that Mr. Norman presented to you for  
(5) chiropractic treatment, he received mechanical  
(6) traction, billed using 97110, trigger-points  
(7) billed using 98941 and spinal manipulation  
(8) billed using 98940?

(9) A You said 989 for and --

(10) Q I'm sorry, it would be spinal  
(11) manipulation for 98941, trigger-points for  
(12) 97125 --

(13) A No. The code's that on the sheet  
(14) is 98941, 97110 and 97124.

(15) Q 124, I'm sorry, that's right. And  
(16) those reflect the three services that we've been  
(17) talking about, correct?

(18) A Yes.

(19) Q So based upon the bills, is it  
(20) fair to say that Mr. Norman received those three  
(21) services on each day you met with him for  
(22) chiropractic treatment?

(23) A Yes.

(24) Q Do those codes accurately describe  
(25) the services performed based upon your progress

(1) DR. RICHARD G. HARVEY

(2) notes?

(3) A Yes.

(4) Q Dr. Harvey, we've marked as  
(5) Exhibit K your chiropractic progress notes which  
(6) your counsel provided to us for Derrick Norman.

(7) Would you agree these progress  
(8) notes are a fair and accurate reflection of the  
(9) progress notes provided to us by your counsel,  
(10) which are copies of the notes which are kept in  
(11) Harvey Family's usual course of business?

(12) A Yes.

(13) Q Are you familiar with these  
(14) records?

(15) A Yes.

(16) Q Did you create the template for  
(17) this progress note?

(18) A I believe so.

(19) Q Do you prepare the progress note  
(20) contemporaneously with treatment of claimants?

(21) A Yes.

(22) Q How do you prepare the progress  
(23) notes? What is your process?

(24) A When a patient comes in, I'll ask  
(25) for their subjective complaints, I'll check for

(1) DR. RICHARD G. HARVEY

(2) objective findings, I'll do an assessment and  
(3) progress.

(4) Q If you perform a particular  
(5) treatment on a claimant, where do you indicate  
(6) on the SOAP note that the procedure was  
(7) performed?

(8) A There are different areas where we  
(9) can circle what was performed or we can check  
(10) off what was performed.

(11) Q If an area is not circled or  
(12) checked off, is it fair to say that you didn't  
(13) perform the procedure?

(14) A That's the way it should be, yes.

(15) Q How much time did you spend with  
(16) Mr. Norman on average during each of his  
(17) chiropractic treatments at Harvey Family?

(18) A Sometimes it could be five  
(19) minutes, sometimes a little more.

(20) Q So within that five minutes you  
(21) perform all three services which are reflected  
(22) in the bills?

(23) A Yes.

(24) Q Dr. Harvey, if you could take a  
(25) look at the SOAP note dated May 24, 2012.

(1) DR. RICHARD G. HARVEY

(2) A Yes.

(3) Q Could you tell me what services  
(4) were performed on Mr. Norman on that date?

(5) A He had a spinal adjustment,  
(6) therapeutic exercise was checked off, manual  
(7) therapy was checked off, vibratory percussion  
(8) was checked off.

(9) Q Can you explain what manual  
(10) therapies are?

(11) A Manual therapies are typically  
(12) when I use trigger-point therapy, when I use  
(13) massage on the muscle and trigger-point or we  
(14) could -- mainly it's for trigger-point therapy.

(15) Q How is manual therapy different  
(16) than trigger-point?

(17) A Trigger-point is -- let me just  
(18) see. Trigger-point is part of the manual  
(19) therapy that I do.

(20) Q So what in addition to  
(21) trigger-point does manual therapy consist of?

(22) A It will consist of the  
(23) trigger-point and massaging the muscle area.

(24) Q Dr. Harvey, what are therapeutic  
(25) exercises?

(1) DR. RICHARD G. HARVEY

(2) A Therapeutic exercises is putting  
(3) the patient through different exercises. In his  
(4) case, I would stretch his legs out.

(5) Q How long does that take to do?

(6) A It would just take me a minute or  
(7) so.

(8) Q How about vibratory/percussion,  
(9) what is that?

(10) A It's part of the trigger-point.  
(11) It's when I get on the trigger-point with my  
(12) finger and do a vibration on the trigger-point.

(13) Q Could you explain the procedure  
(14) that your biller uses to bill for trigger-point  
(15) therapy? What would your biller have to see on  
(16) the progress note in order to bill or  
(17) trigger-point therapy?

(18) A Trigger-point therapy should be  
(19) checked off.

(20) Q And to bill for the spinal  
(21) manipulation or the adjustment, what would your  
(22) biller need to see on the progress note?

(23) A The adjustment should be checked  
(24) off.

(25) Q And the same question with

(1) DR. RICHARD G. HARVEY  
(2) mechanical traction, what would be checked off  
(3) on the SOAP note in order for the biller to bill  
(4) for mechanical traction?

(5) A Typically, it will be checked off.  
(6) I'll circle where it says cox on the bottom, cox  
(7) technique on the bottom or on the form there's  
(8) an area where I could check off traction.

(9) Q Dr. Harvey, with respect to the  
(10) May 24, 2012 progress note, can you tell me if  
(11) mechanical traction was performed on Derrick  
(12) Norman?

(13) A It's not checked off on his sheet,  
(14) but it was performed.

(15) Q How do you know it was performed  
(16) if it's not checked off?

(17) A I do it every visit; it's part of  
(18) my technique.

(19) Q What about trigger-point, were  
(20) trigger-points performed on May 24, 2012 on  
(21) Mr. Norman?

(22) A Yes.

(23) Q How do you know?

(24) A Because I do it on every visit.

(25) Q Is it indicated on the May 24th

(1) DR. RICHARD G. HARVEY

(2) progress note?

(3) A It's not checked off there, no.

(4) Q Dr. Harvey, a moment ago you  
(5) testified that your biller enters the billing  
(6) codes to be sent to insurers based upon your  
(7) progress notes, do you recall that testimony?

(8) A Yes.

(9) Q So do you know how it came to be  
(10) that with respect to Mr. Norman on May 24, 2012  
(11) Harvey Family billed Allstate for trigger-point  
(12) therapy and mechanical traction when it's not  
(13) reflected on your progress note?

(14) MR. CHISARI: As he testified,  
(15) it's his pattern and practice.

(16) A The girls know that's what I do,  
(17) so I would have to say they assumed it was done  
(18) on the day, which it was, but it was not checked  
(19) off, unfortunately.

(20) Q Dr. Harvey, are you now saying  
(21) that your office staff do not use the progress  
(22) notes to enter the billing codes in the  
(23) computer?

(24) MS. CHISARI: That's not what he  
(25) said.

(1) DR. RICHARD G. HARVEY

(2) A No, I'm not saying that. They use  
(3) the progress notes, but, again, my basic  
(4) adjustment procedure there are three things I do  
(5) and they put that down, unless I specifically  
(6) tell them otherwise.

(7) Q So does your office staff always  
(8) put down those three billing codes for every  
(9) claimant?

(10) A Unless I tell them that they  
(11) weren't done.

(12) Q Dr. Harvey, if the trigger-point  
(13) and traction therapies were performed, why  
(14) weren't they reflected on the progress note for  
(15) Derrick Norman for May 24th?

(16) A I do not know.

(17) Q Looking through the progress  
(18) notes, would you also agree that trigger-point  
(19) is not checked off on June 1, 2012?

(20) A Yes.

(21) Q And June 8, 2012?

(22) A Yes.

(23) Q And June 19, 2012?

(24) A Yes.

(25) Q August 2, 2012?

(1) DR. RICHARD G. HARVEY

(2) A Yes.

(3) Q August 10, 2012?

(4) A Yes.

(5) Q August 25, 2012?

(6) A Yes.

(7) Q August 28, 2012?

(8) A Yes.

(9) Q I'll just read off a few more  
(10) dates, Dr. Harvey, and as I read them, you can  
(11) go through the notes and if at any point you  
(12) disagree that trigger-points were not checked  
(13) off, you can just stop me.

(14) October 1, 2012, October 10, 2012,  
(15) October 12, 2012, October 17, 2012, November 23,  
(16) 2012, December 3, 2012 and December 17, 2012,  
(17) would you agree that trigger-point is not  
(18) checked on any of those dates?

(19) A Yes.

(20) Q Did you perform trigger-point  
(21) therapy on those dates?

(22) A Yes.

(23) Q Do you have a specific  
(24) recollection of performing trigger-point therapy  
(25) on those dates?

(1) DR. RICHARD G. HARVEY

(2) A Yes.

(3) Q Why isn't the therapies checked  
(4) off on the progress notes for each of those  
(5) dates?

(6) A I don't know.

(7) Q Would you agree that trigger-point  
(8) therapy is checked off on June 2, 2012, June 6,  
(9) 2012, June 19, 2012, June 28, 2012, July 7,  
(10) 2012, July 10, 2012, July 13, 2012, August 7,  
(11) 2012, August 20, 2012, September 17, 2012,  
(12) October 3, 2012, October 19, 2012, November 16,  
(13) 2012 and December 19, 2012?

(14) A Yes.

(15) Q Dr. Harvey, why is it that in  
(16) about half of the progress notes trigger-point  
(17) therapy is checked and in about half  
(18) trigger-point therapy is not checked?

(19) A I don't know.

(20) Q So is it fair to say that the  
(21) billing for Derrick Norman's treatment was not  
(22) based on the progress notes?

(23) A On certain dates, yes.

(24) Q And those are the dates that we  
(25) just discussed?

(1) DR. RICHARD G. HARVEY

(2) A Yes.

(3) Q With regard to mechanical

(4) traction, which was billed for on each of the  
(5) dates we have discussed, do you agree that that  
(6) service is not checked off on May 24, 2012, June  
(7) 1, 2012, June 2, 2012, June 6, 2012, and the  
(8) record should reflect that every year from now  
(9) on will be 2012, I'll just read the actual  
(10) dates, June 19th, June 28th, July 7th, July  
(11) 10th, July 13th, August 7th, August 20th,  
(12) September 17th, October 3rd, October 19th,  
(13) October 22nd, November 16th and December 19th,  
(14) do you agree that on all those dates mechanical  
(15) traction is not checked off?

(16) A Yes.

(17) Q And can you explain why mechanical  
(18) traction was billed for on those dates  
(19) notwithstanding that it's not checked off and  
(20) your biller bases her billing on your progress  
(21) notes?

(22) A It was billed because those  
(23) services were performed.

(24) Q Do you have a specific  
(25) recollection of those services being performed

(1) DR. RICHARD G. HARVEY

(2) on each of those dates?

(3) A Yes.

(4) Q Do you agree that the services  
(5) being performed are not reflected on the  
(6) progress notes, which are in Exhibit K, for the  
(7) dates we've been discussing?

(8) A Yes.

(9) Q Do you agree that those progress  
(10) notes were created contemporaneously with the  
(11) services being provided to Mr. Norman?

(12) A Yes.

(13) Q With regard to mechanical  
(14) traction, could you explain why you didn't check  
(15) off that the services were performed at the time  
(16) you performed the services on Mr. Norman?

(17) A I don't know why they weren't  
(18) checked off.

(19) Q Is it your procedure to check off  
(20) the services that you perform on a patient as  
(21) you're performing the service?

(22) A Yes.

(23) Q A few moments ago you testified  
(24) that your billing people at your office bill for  
(25) all three codes we've been discussing each time

(1) DR. RICHARD G. HARVEY

(2) you've met with Mr. Norman; is that correct?

(3) A Yes.

(4) Q Is that the same procedure for  
(5) every person or every patient that you perform  
(6) chiropractic services on?

(7) A Unless I note to them differently.

(8) Q With respect to the claimants  
(9) which are the subject of today's EUO, do you  
(10) have a recollection of noting to them  
(11) differently with respect to the three codes  
(12) being used?

(13) A On certain occasions if I did an  
(14) X-ray, but basically, those are the three codes  
(15) that I do on every patient.

(16) Q With respect to the claimants  
(17) which are the subject of today's EUO, and we're  
(18) just talking about chiropractic adjustments, did  
(19) you perform those three procedures on each of  
(20) those claimants each time they presented to  
(21) Harvey Family for chiropractic services?

(22) A Yes.

(23) Q With respect to all of the  
(24) claimants which are the subject of today's EUO  
(25) which you performed chiropractic services, did

(1) DR. RICHARD G. HARVEY

(2) you prepare SOAP notes for them

(3) contemporaneously with the treatment being

(4) performed?

(5) A Yes.

(6) Q Dr. Harvey, based upon what you're

(7) telling me, is it fair to say that your biller

(8) doesn't actually even need to have the SOAP

(9) notes in order to perform billing services?

(10) A Yes.

(11) Q But the biller at your office,

(12) it's your understanding based on your earlier

(13) testimony, uses the SOAP notes to select the

(14) codes in the computer system?

(15) A The codes that were used for the

(16) visit each time, those are the ones -- they're

(17) always the same codes. On the initial visit,

(18) when I do an exam or if I do X-rays, those are

(19) marked off and the girl at the front desk puts

(20) it in the computer and based on what she puts in

(21) the computer, the biller does her billing.

(22) MR. MARVIN: Could you read that

(23) back for me.

(24) (Whereupon, the reporter read the

(25) record.)

(1) DR. RICHARD G. HARVEY

(2) Q I guess, Dr. Harvey, I'm trying to  
(3) understand why would the biller put those codes  
(4) in the computer if it is not reflected on the  
(5) SOAP notes?

(6) A Those are the codes that are used  
(7) every time.

(8) MR. CHISARI: As he testified,  
(9) it's his custom and procedure.

(10) Q Are you aware of any instance on  
(11) any of the chiropractic visits for any of the  
(12) claimants which are the subject of today's EUO  
(13) where you did not perform trigger-points?

(14) A No.

(15) Q Are you aware of any chiropractic  
(16) visit from any of the claimants which are the  
(17) subject of today's EUO where you did not perform  
(18) mechanical traction?

(19) A No.

(20) Q For those claimants for which  
(21) those procedures aren't checked on their SOAP  
(22) notes, can you explain why you didn't check off  
(23) the boxes indicating that the procedures were  
(24) performed?

(25) A I can't give you an exact

(1) DR. RICHARD G. HARVEY

(2) explanation, just that it's an error on my part.

(3) Q Did you personally prepare the

(4) SOAP notes --

(5) A Yes.

(6) Q -- for all of the claimants which

(7) are the subject of today's EUO?

(8) A Yes.

(9) Q Dr. Harvey, for the 32 dates which

(10) I've read where the procedure wasn't checked, is

(11) it fair to say you're saying it was in error on

(12) those 32 occasions that you didn't check the

(13) boxes?

(14) A Yes.

(15) Q And that would be the same with

(16) respect to every claimant for which a box isn't

(17) checked which is the subject of this EUO?

(18) A Yes.

(19) MR. MARVIN: I'm going to take a

(20) five-minute break.

(21) (Whereupon, a brief recess was

(22) taken.)

(23) Q Dr. Harvey, pursuant to your

(24) office procedure, if the services were

(25) performed, they would be checked off on your

(1) DR. RICHARD G. HARVEY

(2) daily progress notes; is that correct?

(3) A They should be, yes.

(4) Q Dr. Harvey, as a chiropractor you  
(5) are aware of the recordkeeping requirements in  
(6) terms of keeping accurate notes  
(7) contemporaneously with the services performed on  
(8) a patient?

(9) A Yes.

(10) Q What are they?

(11) A The services and the notes that  
(12) you -- that the information received from a  
(13) patient should be put in the notes every day.

(14) Q The information received from the  
(15) patient, is that what you said?

(16) A Yes.

(17) Q What about the actual services  
(18) performed?

(19) A And that should be noted also,  
(20) yes.

(21) Q And are you aware as a  
(22) chiropractor who set that requirement? Was it  
(23) the Department of Education, Department of  
(24) Health, so forth? Do you know who --

(25) A I don't know exactly who set it.

(1) DR. RICHARD G. HARVEY

(2) Q But you are aware there is a  
(3) standard of practice as a chiropractor that's  
(4) supposed to be followed where services performed  
(5) are contemporaneously noted in a patient's  
(6) documents?

(7) A Yes.

(8) Q Do you have an explanation as to  
(9) why you didn't follow that standard of practice  
(10) on the 32 instances we're discussing here as  
(11) well as any other instances with these claimants  
(12) in which the boxes aren't checked?

(13) A No.

(14) MR. CHISARI: Actually, he  
(15) answered it; it was a mistake. He  
(16) answered it earlier.

(17) Q Dr. Harvey, the SOAP notes have  
(18) the boxes for you to check in order to document  
(19) that certain services were performed; is that  
(20) correct?

(21) A Yes.

(22) Q With respect to the procedures  
(23) we've been talking about, which were billed for  
(24) which aren't checked on the SOAP notes, is it  
(25) fair to say that there is no documented evidence

(1) DR. RICHARD G. HARVEY  
(2) within the SOAP notes that the service was  
(3) actually performed?

(4) A Yes.

(5) Q Are you aware of any other  
(6) documentary or other evidence which would  
(7) demonstrate that the services were performed as  
(8) billed for?

(9) MR. CHISARI: Objection. Other  
(10) than his testimony that he performed  
(11) them?

(12) MR. MARVIN: That's correct.

(13) MR. CHISARI: I'd like to know  
(14) your basis for alleging some type of  
(15) fraud. His answer, I did it, is good  
(16) enough. He doesn't have to provide any  
(17) other proof. He did it, he billed.

(18) MR. MARVIN: I'm asking if there's  
(19) any documentary evidence that the  
(20) services which were will billed for were  
(21) performed.

(22) MR. CHISARI: And I'm asking your  
(23) basis for asking him that question.

(24) MR. MARVIN: The SOAP notes don't  
(25) reflect the services were performed, so

(1) DR. RICHARD G. HARVEY

(2) I'm asking if there's any other document  
(3) which may exist which reflect that the  
(4) services were performed.

(5) MR. CHISARI: Fine, Doctor, you  
(6) can answer.

(7) A No. Except as counsel mentioned  
(8) that I did perform those services, but they are  
(9) not documented.

(10) Q You indicated you know you  
(11) performed those services because you perform  
(12) those services on every patient which you see?

(13) A Yes.

(14) Q Is your recollection of performing  
(15) those three services on claimants, which are the  
(16) subject of today's EUO, based on specific  
(17) knowledge of performing the services or based on  
(18) your general practice of always performing those  
(19) three services on claimants?

(20) A Both.

(21) Q So if I were to pick a day, for  
(22) example, July 13, 2012, where claimant Sandra  
(23) Michaels received, according to the SOAP notes,  
(24) trigger-points which were billed for also, do  
(25) you have a specific recollection of performing

(1) DR. RICHARD G. HARVEY  
(2) trigger-points on Sandra Michaels on July 13,  
(3) 2012?

(4) A I have a specific recollection of  
(5) doing trigger-points. I know I do on each and  
(6) every visit.

(7) Q Again, that is just based upon  
(8) your general practice of always performing --

(9) MR. CHISARI: I'm going to cut you  
(10) off. I'm not going to let you ask him  
(11) the same question 27 times till you get  
(12) an answer you like. He said both, on a  
(13) specific recollection and on general  
(14) procedure. You then just keep asking  
(15) him. That's his answer. I'm going to  
(16) instruct him not to answer any more  
(17) questions down this line because he  
(18) answered it already. We're not going  
(19) down this path till finally you sit there  
(20) badgering him until he trips up. I'm  
(21) instructing my client not to answer the  
(22) questions any more when it deals with  
(23) specific recollection of a specific date.  
(24) He said he has specific recollections of  
(25) performing those procedures on those

(1) DR. RICHARD G. HARVEY

(2) days. We're done.

(3) Q Do you have a specific  
(4) recollection of performing trigger-points on  
(5) Sandra Michaels on July 13, 2012?

(6) A Yes.

(7) MR. CHISARI: There you go, he  
(8) answered it.

(9) Q Could you describe what your  
(10) specific recollection is?

(11) A I know that on Ms. Michaels when  
(12) she comes in, that's the services I performed on  
(13) her.

(14) Q Do you have a specific  
(15) recollection of performing it on July 13, 2012?

(16) MR. CHISARI: Objection. Don't  
(17) answer. Again, you've asked it three  
(18) times and he answered yes all three  
(19) times. You're like a girlfriend we're  
(20) fighting with who keeps asking the  
(21) question until she gets a different  
(22) answer. That's the answer. It's not  
(23) changing. I'm instructing him not to  
(24) answer the question. Move on, Counsel.

(25) MR. MARVIN: Counsel, I'm not

(1) DR. RICHARD G. HARVEY  
(2) trying to get him to change his answer.  
(3) He testified he has a specific  
(4) recollection and I have --

(5) MR. CHISARI: And he answered the  
(6) question and then you asked him again.

(7) MR. MARVIN: Let me finish. I  
(8) have the right to test his specific  
(9) recollection he claims he has.

(10) MR. CHISARI: And he answered that  
(11) question when he said how he has that  
(12) specific recollection. Then you wanted  
(13) to ask him again. He's not answering it  
(14) any more.

(15) MR. MARVIN: That's a different  
(16) question.

(17) MR. CHISARI: It is not a  
(18) different question.

(19) Q Dr. Harvey, how do you have a  
(20) specific recollection of performing  
(21) trigger-points on July 13, 2012?

(22) MR. CHISARI: Objection. You  
(23) asked that question. Just because you  
(24) changed the way you asked it, doesn't  
(25) make it a different question.

(1) DR. RICHARD G. HARVEY

(2) Q Dr. Harvey, how do you have a  
(3) specific recollection of performing  
(4) trigger-points on July 13, 2012?

(5) MR. CHISARI: We're done.

(6) THE WITNESS: Last question.

(7) MR. CHISARI: Okay.

(8) A I have a specific recollection  
(9) because that's the service I always perform.

(10) Q Dr. Harvey, is it fair to say that  
(11) you have a general recollection of performing  
(12) those services on Sandra Michaels because it's  
(13) the service that you always perform as opposed  
(14) to a specific recollection of that particular  
(15) day?

(16) MR. CHISARI: Objection. We're  
(17) not going through this. You're not  
(18) asking it 15 times. Now you're trying to  
(19) trip him up. We're done. We're going to  
(20) get up and walk out and you guys do what  
(21) you're going to do. I'm going to go to a  
(22) judge with 7,000 pages of documents and  
(23) the 400 pages of EUO and let a judge say,  
(24) he didn't comply with your verification  
(25) request. Don't answer any more questions

(1) DR. RICHARD G. HARVEY  
(2) with July 13th or any of the other 32  
(3) days because all he's trying to do now,  
(4) Doctor, is trip you up.

(5) MR. MARVIN: First of all, July  
(6) 13th is not even the same claimant, so it  
(7) has nothing to do with 32 days.

(8) MR. CHISARI: Counsel, you get the  
(9) point I'm making.

(10) A I have a specific recollection of  
(11) doing those services on the patient, yes.

(12) Q On July 13, 2012, how long did it  
(13) take to do the trigger-point service?

(14) A The whole visit took approximately  
(15) five minutes, so the trigger-point itself is  
(16) done within a minute I would say.

(17) Q Do you remember what Sandra  
(18) Michaels was wearing that day?

(19) A No.

(20) Q Do you remember how she responded  
(21) to treatment that day?

(22) A No.

(23) Q Do you remember speaking with her  
(24) that day?

(25) A I speak with her every day, so I

(1) DR. RICHARD G. HARVEY  
(2) don't know exactly what was spoken on that day.  
(3) I speak to her every day when she comes in.

(4) Q So you don't have a specific  
(5) recollection of speaking to her that day?

(6) A No.

(7) MR. MARVIN: Off the record,  
(8) please.

(9) (Discussion held off the record.)

(10) MR. CHISARI: Here are all the  
(11) records that were requested in the last  
(12) EUO letter, which was I think March 14th,  
(13) for ten more assignors.

(14) Q Dr. Harvey, in the documents that  
(15) were just provided, there is a referral for NCV,  
(16) EMG testing for claimant Warren Sio, S-I-O.

(17) Could you explain why Warren Sio  
(18) was referred for NCV, EMG testing?

(19) A Because of his symptomology.

(20) Q What about his symptomology lead  
(21) to your belief that he needed NCV, EMG testing?

(22) A There was radiculitis and there  
(23) was weakness and based on that, we chose to do  
(24) that to determine the exact location of the  
(25) nerve involvement.

(1) DR. RICHARD G. HARVEY

(2) Q Did you personally evaluate

(3) Warren Sio?

(4) A I evaluated him, yes.

(5) Q With respect to the evaluation

(6) which lead to the referral for NCV, EMG testing,

(7) did you perform the evaluation and --

(8) A Yes.

(9) Q -- and do the referral?

(10) A Yes.

(11) Q I see you referred him to Neil

(12) Goldsmith?

(13) A Yes.

(14) Q Who is Neil Goldsmith?

(15) A Neil Goldsmith works in my office

(16) and does the EMGs and NCVs for me.

(17) Q And does Neil Goldsmith perform

(18) the NCVs, EMGs at your office?

(19) A Yes.

(20) Q Does your office bill for the

(21) NCVs, EMGs?

(22) A No. He does it himself.

(23) Q Does Neil Goldsmith have a company

(24) or under his own name?

(25) A Yes.

(1) DR. RICHARD G. HARVEY

(2) Q Which one?

(3) A Under his own name.

(4) Q With respect to some of the other  
(5) claimants, which are the subject of today's EUO,  
(6) there were referrals to have physical  
(7) performance testing.

(8) Could you describe under what  
(9) circumstances you would refer for physical  
(10) performance testing?

(11) A To determine muscle strength,  
(12) range of motion, how they function in certain  
(13) functional capabilities.

(14) Q What exactly is physical  
(15) performance testing?

(16) A It's a test that's done to test  
(17) range of motion, muscle strength. It's a way to  
(18) sometimes evaluate their progress.

(19) Q Do you know how that test is  
(20) performed?

(21) A I don't do the test, so I don't  
(22) know how it's performed.

(23) Q Who does the test?

(24) A There was a company that used to  
(25) come to our office, but I no longer do that test

(1) DR. RICHARD G. HARVEY

(2) any more.

(3) Q When did you stop referring for  
(4) the test?

(5) A Six months, a year ago.

(6) Q What is the name of the company  
(7) that came into your office to perform the test?

(8) A You know, to be honest, I don't  
(9) recall the name. I think he changed it the last  
(10) time.

(11) Q Was it Central Broadway? Does  
(12) that sound familiar?

(13) MR. CHISARI: If you don't  
(14) remember --

(15) A I don't recall.

(16) Q Does Professional Health Services  
(17) sound familiar?

(18) A That sounds familiar.

(19) Q Do you remember the name of the  
(20) person that came in to perform the services?

(21) A No.

(22) Q Does the name Dr. Chillame  
(23) (phonetic) sound familiar to you?

(24) A Yes.

(25) Q Was it Dr. Chillame that came in

(1) DR. RICHARD G. HARVEY

(2) to perform the services?

(3) A It was his company. I don't know  
(4) if it was him specifically.

(5) Q Do you recall how you developed a  
(6) relationship with Dr. Chillame's company?

(7) A Years ago I used to use them for  
(8) testing and I've used them on and off over the  
(9) years.

(10) Q Are you referring to his  
(11) Professional Health Services or the prior  
(12) company which you didn't recall the name of?

(13) A I used him for the same service,  
(14) but they might have had a different name, but  
(15) always for the same service.

(16) Q Have you ever met him?

(17) A Yes.

(18) MR. CHISARI: At this point, I'm  
(19) going to ask what's the relevance of  
(20) going into this? None of this is in the  
(21) bills. I don't even think this is in the  
(22) records. He testified he didn't use  
(23) these people for years. Why are you  
(24) wasting time going into something he  
(25) doesn't bill for and doesn't refer for

(1) DR. RICHARD G. HARVEY

(2) any more?

(3) Q Do your bills have any aspect of  
(4) physical performance testing or functional  
(5) evaluation?

(6) A I did at one point. I forgot the  
(7) component that we did, but we no longer do that.

(8) Q With respect to the claimants that  
(9) are the subject of today's EUO, did you bill for  
(10) a component of physical performance testing?

(11) A Not that I recall.

(12) MR. MARVIN: Off the record,  
(13) please.

(14) (Discussion held off the record.)

(15) Q Dr. Harvey, we'll get back to  
(16) that. We were talking about Neil Goldsmith.

(17) Is he an employee of Harvey  
(18) Family?

(19) A He's also an employee of mine,  
(20) yes.

(21) Q In addition to being an employee,  
(22) he also bills for NCV, EMG testing outside of  
(23) Harvey Family?

(24) A He has a separate company outside  
(25) working for me, yes.

(1) DR. RICHARD G. HARVEY

(2) Q Why is it that he bills for the  
(3) NCV, EMG outside of Harvey Family, but bills for  
(4) the evaluations within Harvey Family as an  
(5) employee?

(6) A He does everything on his own. I  
(7) don't get involved in any billing. I wanted to  
(8) leave it all to him.

(9) Q I believe you testified at your  
(10) first day of testimony that Mr. Goldsmith does  
(11) all of the initial evaluations as well as the  
(12) follow-up evaluations --

(13) A Yes.

(14) Q -- do you recall that testimony?

(15) A Yes.

(16) Q Was it based on an initial or  
(17) follow-up evaluation that Mr. Sio was referred  
(18) for the NCV, EMG?

(19) A It was based on one day when I saw  
(20) him and based on his findings, recommended that  
(21) the test be done for him.

(22) Q With respect to the letter of  
(23) medical necessity for Mr. Sio for his upper  
(24) extremities, what were the findings that you  
(25) found which indicated that you thought he needed

(1) DR. RICHARD G. HARVEY

(2) an NCV on his upper extremities?

(3) A There was radiculopathy into the  
(4) extremities.

(5) Q How do you define radiculopathy?

(6) A It was weakness, radiating pain  
(7) into the extremities.

(8) Q Which extremities?

(9) A I don't know offhand without  
(10) looking at his records.

(11) Q There's a February 8th referral  
(12) relating to lower extremities and there is a  
(13) January 25, 2012 for upper extremities.

(14) Based upon those referrals, is it  
(15) your recollection that he had radiculopathy into  
(16) all his extremities?

(17) A Yes.

(18) Q What were the results of the NCV,  
(19) EMG performed?

(20) MR. CHISARI: Counsel, show him  
(21) the records. Don't ask him about things  
(22) that happened if he's got records in  
(23) front of him.

(24) MR. MARVIN: We'll mark this  
(25) entire stack as all documents relating to

(1) DR. RICHARD G. HARVEY

(2) Mr. Sio as Exhibit L.

(3) MR. CHISARI: And that stack  
(4) included seven other assignors.

(5) MR. MARVIN: Just for the purposes  
(6) of this line of questioning, we'll just  
(7) mark Mr. Sio's documents.

(8) (Whereupon, several pages of  
(9) records relating to Warren Sio was marked  
(10) Exhibit L for identification, this date.)

(11) Q I believe the question was, what  
(12) were the findings of the EMGs, NCVs?

(13) MR. CHISARI: (Handing).

(14) A (Perusing). Okay. For Mr. Sio,  
(15) as far as the lumbar spine, the above electric  
(16) diagnostic study revealed no evidence of lumbar  
(17) radiculopathy or peripheral neuropathy at this  
(18) time.

(19) MR. CHISARI: Let the record  
(20) reflect that Dr. Harvey is reading the  
(21) conclusions of Dr. Goldsmith.

(22) Q Did you speak with Dr. Goldsmith  
(23) regarding Mr. Sio's treatment?

(24) A Yes.

(25) Q Was that after the EMG, NCV?

(1) DR. RICHARD G. HARVEY

(2) A I don't recall.

(3) Q Was the treatment changed based on  
(4) the EMG, NCV, your treatment?

(5) A No, no.

(6) Q And as far as the electric  
(7) diagnostic study in the cervical spine revealed  
(8) C-5, C-6 radiculopathy.

(9) MR. MARVIN: Off the record,  
(10) please.

(11) (Discussion held off the record.)

(12) Q Dr. Harvey, with respect to the  
(13) EMG, NCV testing, were there any other claimants  
(14) that you recall, which are the subject of  
(15) today's EUO, which received EMG, NCV testing?

(16) A I don't know specific ones that  
(17) have had it. I know other patients that have  
(18) had EMGs, but I don't know the specific ones in  
(19) this EUO which had EMGs, NCVs.

(20) Q What percentage of your patients  
(21) would you say you refer for EMG, NCV testing as  
(22) part of their treatment?

(23) A I couldn't tell you an exact  
(24) percentage.

(25) Q Do you refer them all to

(1) DR. RICHARD G. HARVEY

(2) Dr. Goldsmith?

(3) A Not all, no.

(4) Q Most?

(5) A Most, yes.

(6) Q Do you know 95 percent, 90

(7) percent?

(8) MR. CHISARI: He said he can't

(9) answer the question.

(10) A I can't answer the question.

(11) Q In terms of your letter of medical

(12) necessity for Mr. Sio, you noted there were

(13) signs of focal demyelination and nerve

(14) conduction block. The patient may benefit from

(15) surgical intervention.

(16) What is focal demyelination?

(17) A It's where the nerve starts to  
(18) lose some of the outer sheath that protects it.

(19) Q These are nerves in what part of  
(20) the body?

(21) A These are nerves that typically  
(22) will go into the extremities.

(23) Q From the spine?

(24) A From the spine, correct.

(25) Q And nerve conduction block, can

(1) DR. RICHARD G. HARVEY

(2) you describe what a nerve conduction block is?

(3) A I need to see that letter, please.

(4) Q Sure.

(5) A (Perusing). Nerve conduction  
(6) block means that the nerve is not conducting  
(7) from point A to point B.

(8) MR. CHISARI: There is a blockage  
(9) in the nerve signals?

(10) THE WITNESS: Correct.

(11) Q What would cause that type of  
(12) blockage?

(13) A Could be a disc lesion, could be a  
(14) Facet syndrome, could be a tumor.

(15) Q Have you taken any courses or  
(16) seminars on NCV, EMG testing?

(17) A Myself, personally, no.

(18) Q In terms of helping in the  
(19) treatment of a patient, what do you base your  
(20) understanding of in terms of when or why NCV,  
(21) EMG testing would help in the diagnosis and  
(22) treatment of a patient?

(23) A It will help in the treatment  
(24) based on what it shows. If there's a severe  
(25) blockage, the patient might require a

(1) DR. RICHARD G. HARVEY

(2) neurosurgical consultation. Sometimes when we  
(3) see the test, it will show the exact level it's  
(4) at and I'll pay more attention to that specific  
(5) level.

(6) Q Are you present when the test is  
(7) performed?

(8) A No.

(9) Q Does anyone else aside from  
(10) Mr. Goldsmith perform the test?

(11) A In my office, no.

(12) Q Does he have a separate location  
(13) or room in the office where he performs the  
(14) test?

(15) A Yes.

(16) Q Where is that?

(17) A He does it in one of my treatment  
(18) rooms he'll use.

(19) Q Does he generally perform the NCV,  
(20) EMG testing every day?

(21) A Every day, no.

(22) Q Does Harvey Family perform any  
(23) other type of neurological evaluation or testing  
(24) in its treatment of patient aside from NCV, EMG?

(25) A No.

(1) DR. RICHARD G. HARVEY

(2) MR. CHISARI: Also Harvey --

(3) MR. MARVIN: I'll withdraw that.

(4) Q Does Harvey Family refer for any  
(5) other neurological testing aside from NCV, EMG?

(6) A No.

(7) Q With respect to the claimants  
(8) which are the subject of this EUO which received  
(9) NCV, EMG testing, or in general with respect to  
(10) Harvey Family, have you ever had to refer  
(11) patients for surgery based upon NCV, EMG  
(12) findings?

(13) A Yes.

(14) Q How often do you say that occurs?

(15) A I don't do it often because I find  
(16) that spinal surgery many times can create more  
(17) problems than more benefits, but there are  
(18) certain cases where it just has to be done and  
(19) in those cases, we'll refer them out.

(20) Q How long has Neil Goldsmith been  
(21) working for you?

(22) A Somewhere between five and ten  
(23) years I would say.

(24) Q When did he start performing NCV,  
(25) EMG testing for Harvey Family or based on

(1) DR. RICHARD G. HARVEY

(2) referrals from Harvey Family?

(3) A I would say approximately three  
(4) years ago.

(5) Q He is a salaried employee of  
(6) Harvey Family?

(7) A Yes.

(8) Q Other than his salary, does he  
(9) receive any other money or compensation from  
(10) Harvey Family?

(11) A No.

(12) Q Does he pay any money or  
(13) compensation to Harvey Family for any reason?

(14) A He --

(15) MR. CHISARI: He pays rent?

(16) A Yes, he does. I don't know  
(17) exactly how it's defined. Yes, he pays for -- I  
(18) don't know how to classify it. But I have the  
(19) documentation what it is. It's for -- I can't,  
(20) I'm sorry.

(21) Q How much does he pay you?

(22) A I believe it's -- he pays 2,000 a  
(23) month.

(24) Q He pays \$2,000 a month?

(25) A Yes.

(1) DR. RICHARD G. HARVEY

(2) Q And that is a set amount every  
(3) month?

(4) A Yes.

(5) Q And that's pursuant to some  
(6) written agreement you have with him?

(7) A Yes.

(8) Q How long has the written agreement  
(9) been in effect?

(10) A I don't know.

(11) Q What is the substance of the  
(12) written agreement?

(13) A It's for the use of -- for certain  
(14) facilities in my office.

(15) Q Which facilities in particular?

(16) A It's for the use of the staff, the  
(17) use of the room. Again, it's all in the report.  
(18) I don't have it with me.

(19) MR. MARVIN: Counsel, we'll ask  
(20) for production and we'll put it in  
(21) writing.

(22) MR. CHISARI: I'm going to ask for  
(23) the basis for that because there's no  
(24) relevance to the EUO if it's dealing with  
(25) EMGs, NCVs that my client doesn't bill

(1) DR. RICHARD G. HARVEY

(2) for. If you want to ask Dr. Goldsmith  
(3) for it, you can ask him for it, but I'm  
(4) going to advise my client not to turn it  
(5) over.

(6) Q Dr. Harvey, Neil Goldsmith we've  
(7) discussed as an employee of yours. Does he  
(8) receive a salary?

(9) A Yes.

(10) Q How much of a salary does he  
(11) receive?

(12) A He gets it automatically taken  
(13) out. It's been for a long time. I believe it's  
(14) \$1,500.

(15) Q Is that per week?

(16) A Yes.

(17) MR. CHISARI: Counsel, you can go  
(18) back to your EUO from the first part  
(19) because I know you went through  
(20) Dr. Goldsmith and what he gets paid.

(21) A I don't know the exact fee because  
(22) it's taken out automatically every week.

(23) Q Does he sublease space from you?  
(24) Is that what the agreement is?

(25) A It might be. I don't know all the

(1) DR. RICHARD G. HARVEY  
(2) specifics. It's all in the contract.

(3) Q Have you only executed that one  
(4) agreement with Mr. Goldsmith?

(5) A Yes.

(6) Q Do you recall when that agreement  
(7) was executed?

(8) A No.

(9) MR. CHISARI: Counsel, I am now  
(10) going to object. My client doesn't bill  
(11) for the EMGs.

(12) MR. MARVIN: He answered the  
(13) question.

(14) Off the record, please.

(15) (Discussion held off the record.)

(16) Q We didn't cover that the first day  
(17) about Goldsmith. So I'm going to ask a few more  
(18) questions on it.

(19) You said Mr. Goldsmith earns about  
(20) \$1,500 per week?

(21) A Yes.

(22) Q Is that the salary you negotiated  
(23) with him?

(24) A Yes.

(25) Q That's about \$6,000 month?

(1) DR. RICHARD G. HARVEY

(2) A Yes.

(3) Q Separate and apart from that, you  
(4) have a separate agreement with him where he pays  
(5) you \$2,000; is that correct?

(6) A Yes.

(7) Q Does he do that by cash, by check?

(8) A By check.

(9) Q Is this an agreement that  
(10) Mr. Goldsmith entered into with you alone, or  
(11) with you in consultation with the other two  
(12) managing members of Harvey Family?

(13) MR. CHISARI: Counsel, again, I'm  
(14) going to ask you the relevance of what  
(15) Dr. Goldsmith does with EMGs, NCVs.  
(16) Dr. Harvey doesn't bill for it. He's not  
(17) asking Allstate to pay for it. Ask  
(18) Dr. Goldsmith these questions, not  
(19) Dr. Harvey. They are not proper for this  
(20) EUO. Don't answer it.

(21) Q Are you going to --

(22) A I've been advised not to answer  
(23) the question.

(24) Q Aside from Mr. Goldsmith, do any  
(25) other providers pay you money on a monthly or

(1) DR. RICHARD G. HARVEY  
(2) weekly basis based upon any sublease or other  
(3) agreement?

(4) A No.

(5) MR. MARVIN: At this time, I have  
(6) no other questions. I will note for the  
(7) record that some, if not all, of the  
(8) physical therapy and acupuncture services  
(9) that Dr. Harvey lacked personal knowledge  
(10) as to most of the services, if not all.

(11) Allstate will reserve its right to  
(12) request testimony of additional witnesses  
(13) with firsthand knowledge of the  
(14) performance of the services on the  
(15) claimants which are the subject of the  
(16) EUO.

(17) MR. CHISARI: At this time, we are  
(18) going to take the position that we  
(19) satisfied the EUO request under the  
(20) insurance regulations. Harvey  
(21) Chiropractic is a professional  
(22) corporation and we can produce the  
(23) witness of our choice.

(24) Furthermore, I asked specifically  
(25) in my letter to narrow the issues down,

(1) DR. RICHARD G. HARVEY  
(2) your office chose not to, so we produced  
(3) the proper witness. At this time, we  
(4) consider our obligation complete.

(5) MR. MARVIN: I'll also note that  
(6) in Exhibit B, which is the initial notice  
(7) of EUO, we did note and I believe in the  
(8) subsequent notices of EUO that in lieu of  
(9) Dr. Harvey's appearance, you can  
(10) designate any licensed professional or  
(11) personnel who did the billed for  
(12) services, including the services rendered  
(13) to perform interpretation, diagnosis and  
(14) finding made with respect to any such  
(15) tests and physical examinations.

(16) MR. CHISARI: We did. We produced  
(17) the licensed professional with knowledge,  
(18) Dr. Harvey.

(19) MR. MARVIN: Again, I'll reiterate  
(20) on the record that Dr. Harvey  
(21) demonstrated a lack of personal knowledge  
(22) with respect to physical therapy and  
(23) acupuncture services which underlays this  
(24) EUO.

(25) MR. CHISARI: Like I said, we'll

(1)

DR. RICHARD G. HARVEY

(2)

take the position that we'll let a

(3)

competent jurisdiction decide that.

(4)

MR. MARVIN: Thank you, Doctor.

(5)

(Time noted: 5:00 p.m.)

(6)

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## A C K N O W L E D G M E N T

(3)

(4)

STATE OF NEW YORK )

(5)

:ss

(6)

COUNTY OF \_\_\_\_\_ )

(7)

(8)

I, DR. RICHARD G. HARVEY, hereby  
certify that I have read the transcript of my  
testimony taken under oath in my deposition of  
March 21, 2013; that the transcript is a  
true and complete record of my testimony, and  
that the answers on the record as given by me  
are true and correct.

(15)

(16)

(17)

(18)

\_\_\_\_\_  
DR. RICHARD G. HARVEY

(19)

(20)

Subscribed and sworn to before me this

(21)

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(22)

(23)

(24)

(Notary Public, State of New York)

(25)

(1)

(2)

## I N D E X

(3)

(4)

(5)

WITNESS	EXAMINATION BY	PAGES
Dr. Harvey	Mr. Marvin	186-301

(6)

(7)

(8)

## E X H I B I T S

(9)

EXHIBIT	DESCRIPTION	PAGE	LINE
I - J	Photocopies of physical therapy and acupuncture notes for Derrick Norman	191	21
K	Photocopies of chiropractic progress notes for Derrick Norman	254	16
L	Several pages of records relating to Warren Sio	290	8

(16)

(17)

(18)

## I N F O R M A T I O N   R E Q U E S T E D

(19)

(20)

DESCRIPTION	PAGE	LINE
Harvey Family's operating agreement	251	23
Written agreement with Dr. Goldsmith	287	19

(21)

(22)

(23)

(24)

(25)

(1) CERTIFICATE OF NOTARY

(2)

(3) STATE OF NEW YORK

(4) SS:

(5) COUNTY OF QUEENS

(6) I, JOSEPHINE CORIC, a Stenotype Shorthand  
(7) Reporter and Notary Public within and for the State  
(8) of New York, do hereby certify that the within  
(9) Continued Examination of DR. RICHARD G. HARVEY was  
(10) held before me and I faithfully and impartially  
(11) recorded stenographically the questions, answers and  
(12) colloquy.

(13) I further certify that after said examination  
(14) was recorded by me, it was reduced to typewriting  
(15) under my supervision, and I hereby submit that the  
(16) within contents of said examination are true and  
(17) accurate to the best of my ability.

(18) I further certify that I am not a relative of  
(19) nor attorney for any of the parties connected with  
(20) the aforesaid examination, nor otherwise interested  
(21) in the testimony of the witness.

(22)

(23)

(24)

(25)

*Josephine Coric*

JOSEPHINE CORIC

(1) ERRATA SHEET FOR THE TRANSCRIPT OF:

(2) Case Name: EUO of Dr. Richard G. Harvey

(3) EUO Date: 3/21/13

(4) Claimant: Dr. Richard G. Harvey

(5) Place Held: 115 Broadway, NY, NY

(6) CORRECTIONS

(7) Pg. Ln. Now Reads Should Read Reasons

(8) \_\_\_\_\_

(9) \_\_\_\_\_

(10) \_\_\_\_\_

(11) \_\_\_\_\_

(12) \_\_\_\_\_

(13) \_\_\_\_\_

(14) \_\_\_\_\_

(15) \_\_\_\_\_

(16) \_\_\_\_\_

(17) \_\_\_\_\_

(18) \_\_\_\_\_

(19) \_\_\_\_\_

(20) DR. RICHARD G. HARVEY

(21) \_\_\_\_\_

(22) Subscribed and sworn to before me

(23) this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(24) \_\_\_\_\_

(25) (Notary Public)